

No. 89-640

Supreme Court, U.S.

FILED

MAR 2 1990

JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1989

MANUEL LUJAN, JR., SECRETARY OF THE INTERIOR,
ET AL., PETITIONERS

v.

NATIONAL WILDLIFE FEDERATION, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI
FILED OCTOBER 18, 1989
CERTIORARI GRANTED JANUARY 16, 1990

BEST AVAILABLE COPY

1989

In the Supreme Court of the United States

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MANUEL LUJAN, JR., SECRETARY OF THE INTERIOR,
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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

85-2238

NATIONAL WILDLIFE FEDERATION

v.

BURFORD, ET AL.

RELEVANT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
7/15/85	1	COMPLAINT; * * *.
7/15/85	2	MOTION of pltf for preliminary injunction; * * *.
8/19/85	7	AMENDED COMPLAINT.
9/16/85	23	ORDER permitting the Mountain States Legal Foundation and the Minerals Exploration Coalition, Inc. to intervene as party defts.
12/4/85	50	ORDER granting pltf.'s motion for a preliminary injunction; enjoining defts. from taking certain action; enjoining certain persons holding interests in lands that were the subject of Classification terminations or withdrawal revocations since 1-1-81 from taking certain action; directing defts. to publish this order in the Federal Register; directing pltf. to post security in the amount of one Hundred dollars (\$100); * * *.

DATE	NR	PROCEEDINGS
12/4/85	51	ORDER denying defts.' motion to dismiss.
12/4/85	52	ORDER granting the motion to intervene of Congressman Sieberling.
12/16/85	56	MOTION by deft-intervenors Mountain States Legal Foundation, et al. for reconsideration of preliminary injunction, and denial of motion to dismiss, or in the alternative, to amend the judgment to certify the issue of non joinder to the Court of Appeals under 28 U.S.C. § 1292(b).
12/16/85	59	MOTION by defts. to amend, Reconsider and Clarify the Court's Order of 12/4/85.
2/10/86	84	ORDER denying the motions by the federal defts. and by deft.-intervenor Mountain States Legal Foundation for reconsideration, and by deft.-intervenor to amend the judgment to certify the issue to the Court of Appeals.
2/10/86	86	ORDER granting pltf's motion for a preliminary injunction; enjoining defts. from taking certain action; directing publication of this order in the Federal Register; setting injunction security in the amount of \$100.00 * * *.
3/7/86	101	ORDER filed 3/6/86 granting the motion to intervene of the Trust for Public Land for the limited purpose of determining whether proposed land

DATE	NR	PROCEEDINGS
		exchange is prohibited under Court's order of 2-10-86; directing that the federal defts. issuance of a patent with respect to the land exchange is not exempt under terms of the order.
4/11/86	113	NOTICE of appeal by Mountain States Legal Foundation from order entered 2/10/86; * * *.
4/11/86	114	NOTICE of appeal by Federal deft. from order entered 2/10/86; * * *.
4/14/86	116	ANSWER of deft-intervenors Mountain States Legal Foundation and Mineral Exploration Coalition, Inc., to pltffs amended complaint for Declaratory and Injunctive relief.
4/15/86	119	ORDER filed 4/14/86 granting the Trust for Public Lands intervention for the full course of this proceeding.
4/16/86	120	ANSWER by defts. to complaint of John F. Seiberling, pltf-intervenor.
4/16/86	121	ANSWER by defts. to pltffs amended complaint.
5/16/86	143	ANSWERS by pltf. to deft-intervenors first set of interrogatories (resubmitted); Declaration of Lynn A. Greenwalt; * * *.
5/22/86	146	NOTICE by pltf. of filing; affidavits of Peggy Kay Peterson and Richard Loren Erman.
5/23/86	149	ORDER filed 5/22/86 denying the motions for stay of the preliminary injunction.

DATE	NR	PROCEEDINGS
6/9/86	151	NOTICE by deft to take the deposition of Richard L. Erman.
6/9/86	152	NOTICE by deft to take the deposition of Lynn A. Greenwalt.
6/9/86	153	NOTICE by deft to take the deposition of Peggy K. Peterson.
6/23/86	165	MOTION by pltf. for summary judgment; * * *.
7/1/86	167	MOTION by pltf. to quash and for a protective order; * * *.
7/15/86	178	ORDER filed 7/14/86 granting pltf's motion to quash and for a protective order.
9/5/86	197	MOTION by defts-intervenors' to dismiss or alternatively for judgment on the pleadings; * * *.
9/12/86	206	MOTION by defts for summary judgment and/or for dissolution of the preliminary injunction issued 2/10/86; memorandum in opposition to pltf's motion for summary judgment and in support of deft's motion for summary judgment; * * *.
11/26/86	228	ORDER filed 11/25/86 amending this Court's Order of February 10, 1986, to add a new subparagraph (f) to paragraph 3 of that Order.
12/31/86	233	ORDER directing that the preliminary injunction entered on 12/4/85 as amended on 2/10/86 does not apply to the Geothermal Operations of California Energy Co. Inc; the Bureau of

DATE	NR	PROCEEDINGS
		Land Management shall forthwith vacate and set aside its suspension order of 4/22/86.
1/6/87	236	ORDER that the preliminary injunction entered on 12-4-85, as amended on 2/10/86 does not apply to the Geothermal operations of the Dept. of Water and Power for the City of LA; The Bureau of Land Management shall forthwith vacate and set aside its suspension order of 4-22-86.
1/6/87	237	MEMORANDUM ORDER denying LADWP's motion for declaratory and other relief regarding the Haiwee/Franklin land exchange.
6/3/87	246	ORDER (filed 6/2/87) directing that Congressman Bruce F. Vento, Chairman of the Subcommittee on National Parks and Public Lands, is substituted as pltf-intervenor in this action; * * *.
4/11/88	252	ORDER filed 4/8/88 granting motion of deft's to amend the court's order of 2/10/86, as amended by the court's order of 11/25/86; directing that subparagraph (f) of para 3 of the court's order of 2/19/86, as amended by the court's order of 11/25/86 is amended to read; (3) nothing in this order shall be construed to prohibit or affect: (f) the Secretary of Interior or his designee(s) from complying with the statutory obligations imposed on him by Sec. 3 of Pub. L. No. 99-542

DATE	NR	PROCEEDINGS
		(10/27/86), sec. 104 of Pub L. No. 99-950 (10/30/86), Sections 4(a), 4(b), 6 and 7 of Pub. L. No. 99-632 (11/7/86), Section 12(h) of Pub. L. No. 99-606 (11/6/86) and the last two unnumbered paragraphs under the heading of "Administrative Provisions" in that portion of House Joint Resolution 395, Pub. L. No. 100-202, containing the 1988 Fiscal year appropriations for the Bureau of Land Management.
4/29/88	253	CERTIFIED copy of Judgment from USCA dated 12-11-87 - Affirming Judgment of USDC.
7/29/88	274	ORDER filed 7/28/88 that plft. file any opposition to defts' supplemental memorandum in support of their motion for summary judgment by 8/1/88; pltf. to file by 8/22/88 supplemental memorandum regarding the issue of its standing to proceed; defts. and intervenors opposition to be filed by 9/1/88; pltf's. response to be filed by 9/14/88.
8/22/88	278	STATEMENT by pltf. of P&A's in support of its standing to proceed; attachment.
11/8/88	303	ORDER filed 11/4/88 vacating the court's granting of preliminary injunction; granting motion of defendant's for summary judgment; case dismissed.

DATE	NR	PROCEEDINGS
11/14/88	304	NOTICE OF APPEAL by plaintiff National Wildlife Federation from order entered 11/8/88.
12/22/88	313	NOTICE OF APPEAL by pltf-intervenor CONGRESSMAN BRUCE F. VENTO from order entered on 11/8/88;
12/6/88	322	CERTIFIED copy of Judgment from USCA dated 6/20/89 REVERSING Judgment of USDC and REMANDING case to USDC for further proceedings in accordance with the Opinion.

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

86-5239

NATIONAL WILDLIFE FEDERATION

v.

ROBERT F. BURFORD, ET AL., APPELLANTS

RELEVANT DOCKET ENTRIES

DATE	FILING - PROCEEDINGS
4/24/86	Copy of notice of appeal and docket entries from Clerk, DC.
12/11/87	Opinion for the Court filed by Circuit Judge Mikva.
12/11/87	Opinion concurring in part and dissenting in part filed by Circuit Judge Williams.
12/11/87	Judgment by this Court that the judgment of the District Court appealed from in these causes is hereby affirmed, in accordance with Opinion for the court filed herein date.
4/29/88	Per Curiam order denying petitions for rehearing, with memorandum attached.

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

88-5397

NATIONAL WILDLIFE FEDERATION

v.

ROBERT F. BURFORD, ET AL., APPELLANTS

RELEVANT DOCKET ENTRIES

DATE	FILING - PROCEEDINGS
12/02/88	Copy of notice of appeal and docket entries from Clerk, Dist. Ct.
6/20/89	Opinion for the Court filed by Circuit Judge Edwards.
6/20/89	Judgment by this Court that the judgment of the district court appealed from in this matter is reversed and the case is remanded, in accordance with the Opinion for the Court filed herein this date.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 85-2238

NATIONAL WILDLIFE FEDERATION,
1412 16TH STREET, N.W.,
WASHINGTON, D.C. 20036
(202) 797-6800, PLAINTIFF

v.

ROBERT F. BURFORD,
DIRECTOR, BUREAU OF LAND MANAGEMENT,
UNITED STATES DEPARTMENT OF THE INTERIOR,
18TH AND C STREETS, N.W.,
WASHINGTON, D.C. 20240
(202) 343-1100,

DONALD P. HODEL,
SECRETARY OF THE INTERIOR,
UNITED STATES DEPARTMENT OF THE INTERIOR
18TH AND C STREETS, N.W.,
WASHINGTON, D.C. 20240
(202) 343-1100,

AND

UNITED STATES DEPARTMENT OF THE INTERIOR
18TH AND C STREETS, N.W.,
WASHINGTON, D.C. 20240
(202) 343-1100, DEFENDANTS

[Filed Aug. 19, 1985]

AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. This case challenges the Department of the Interior's conduct of its "land withdrawal review program." Under that program, the defendants have revoked withdrawals involving over 170 million acres of public lands. Another 50 million acres remain to be reviewed. This suit alleges, among other things, that the defendant's land withdrawal review program unlawfully fails to require analysis of proposed withdrawal revocations in land use plans and environmental impact statements, is being conducted without regulations, fails to provide for public participation in decision-making, and fails to provide for Congressional and Presidential review of proposed withdrawal revocations.

2. This suit is brought under provisions of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*; the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.*; and the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

JURISDICTION

3. This Court has jurisdiction of this action under 28 U.S.C. § 1331(a) (federal question jurisdiction) and 28 U.S.C. § 1346 (suits against agencies and officers of the United States).

4. The claims raised in this suit arise under provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*; the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.*; and the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.* The relief sought is authorized by 28 U.S.C. § 2201 (declaratory judgments) and 28 U.S.C. § 2202 (injunctive relief). Venue is proper in this Court under 28 U.S.C.

§ 1391(e). There is a present and actual controversy between the parties to this action.

PARTIES

5. Plaintiff National Wildlife Federation (NWF) has over 4.5 million members and supporters and is the nation's largest non-profit private conservation organization. Incorporated under the laws of the District of Columbia in 1939, NWF is dedicated to the wise use and management of the nation's natural resources. NWF has affiliate organizations and individual members in each of the 50 states and the District of Columbia.

6. NWF and its members are suffering and will continue to suffer injury in fact as a result of the challenged actions. Members of NWF use and enjoy the environmental resources that will be adversely affected by the challenged actions. They regularly use these resources for fishing, hunting, bird and wildlife watching, canoeing and boating, hiking, camping, and other similar activities. These persons' use and enjoyment of these resources will be irreparably injured if the defendants are permitted to terminate protective land use restrictions and thereby open up public lands to exploration, development, and disposal, without the development of land use plans, without prior preparation of adequate environmental impact statements, and without compliance with applicable laws, regulations, and procedures. Among other things, the challenged actions will adversely affect plaintiff and its members by destroying fish and wildlife habitat, and by impairing natural beauty. Further, NWF and its members suffer injury in that they have been and continue to be denied information on the potential impacts of, and alternatives to, defendants' actions and have been denied the opportunity to participate in defendants' decision-making. Further NWF and its members have

suffered injury by reason of their elected representatives, including the President of the United States and members of Congress, having been denied the opportunity and responsibility to participate in defendants' decision-making.

7. Plaintiff and its members are within the zone of interests sought to be protected by the Federal Land Policy and Management Act, the National Environmental Policy Act, and the Administrative Procedure Act.

8. Defendant, Donald P. Hodel is the Secretary of defendant United States Department of the Interior and is charged by law and regulations with the responsibility of administering and enforcing the Federal Land Policy and Management Act and complying with the provisions of the National Environmental Policy Act and the Administrative Procedure Act. He is sued in his official capacity.

9. Defendant Robert F. Burford is the Director of the Bureau of Land Management. Defendant Burford is charged by law and regulations with the responsibility for managing the public lands in compliance with the Federal Land Policy and Management Act, the National Environmental Policy Act, and the Administrative Procedure Act. He is sued in his official capacity.

10. Defendant, United States Department of the Interior, including therein the Bureau of Land Management, is a department and agency of the United States.

11. Plaintiff has made several attempts to resolve the claims raised in this Complaint. On August 14, 1984, plaintiff delivered a letter to Secretary Clark setting forth plaintiff's claims. On January 29, 1985, plaintiff delivered a letter to defendant Hodel substantially setting forth these claims again. On April 2, 1985, plaintiff delivered a letter to defendant Burford setting forth these same claims in additional detail. On April 22, 1985, representatives of the plaintiff met with defendant Burford and members of his staff to discuss these claims. Additional meetings between

representatives of both plaintiff and defendants were held on June 5, 1985, and June 19, 1985. Considerable correspondence has been exchanged between the parties. However, no resolution of this case has been achieved as a result of these efforts.

THE WITHDRAWAL REVIEW PROGRAM

12. Land classifications created under the now expired Classification and Multiple Use Act, 43 U.S.C. §§ 1411 *et seq.* (1964), and other federal statutes protect substantial areas of public lands from various types of commercial use and disposal. These land classifications have been included in defendants [sic] land withdrawal review program as they are "withdrawals" within the meaning of Section 103(j) of the Federal Land Management and Policy Act, 43 U.S.C. § 1702(j).

13. Similarly, other land withdrawals created by administrative action segregate areas of public land for some uses and prohibit others. These, too, have been included in defendants' land withdrawal review program as provided in Section 204(a) and (1) of FLPMA, 43 U.S.C. § 1714(a) and (1).

14. Section 701(c) of the Federal Land Policy and Management Act provides that all land withdrawals and land classifications "in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act. . . ." 43 U.S.C. § 1701(c). Sometime after the passage of FLPMA, defendants created a Withdrawal Review Program. The purpose of this program is to review and eliminate use restrictions which limit access to public lands, including land withdrawals and land classifications.

15. Under the Withdrawal Review Program, defendants have terminated and continue to terminate land classifi-

cations affecting million [sic] acres of public lands. As of May 1985, land classifications on 152.9 million acres of public lands had been terminated by the defendants.

16. Under the Withdrawal Review Program, defendants have terminated and continue to terminate other land withdrawals affecting millions of acres of public lands. As of May 1985, defendants had terminated such land withdrawals on 20.6 million acres.

17. As of May 1985, defendants have submitted to the Office of Management and Budget recommendations for additional withdrawal revocations on public lands totalling 34 million acres. As of May 1985, approximately 15 million additional acres remain to be reviewed under the Land Withdrawal Review Program.

18. Attached to this Complaint as Exhibit A is a list of 788 land status actions, including terminations of land classifications and other land withdrawals, taken by defendants since January 1, 1981. This list is not intended to be inclusive. Upon information and belief, defendants have taken other such land status actions pursuant to the Withdrawal Review Program or other programs and continue to take such actions.

COUNT I

19. Pursuant to Section 202 of the Federal Land Policy and Management Act, land use plans *shall* be developed for the public lands. 43 U.S.C. § 1712. Pursuant to regulations contained at 43 C.F.R. 1600, the land use plan to be developed pursuant to the Act is a "Resource Management Plan."

20. Defendants have completed Resource Management Plans for only 9 of more than 200 identified resource areas on the public lands.

21. The land use status actions enumerated in Exhibit A were completed without prior preparation of the land use plans required by FLPMA.

22. On information and belief, other land withdrawals, including land classifications, have been terminated by defendants without prior preparation of the land use plans required by FLPMA.

23. Defendants' failure to prepare Resource Management Plans prior to commencement of the land status actions enumerated in Exhibit A, or other terminations of land withdrawals, including land classifications, is a violation of defendants' duties under Sections 102(a)(3), 202(d) and 701(c) of the Federal Land Policy and Management Act (43 U.S.C. §§ 1701(a)(3), 1712(d), 1701(c)), and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706(2).

COUNT II

24. Section 204(1) of the Federal Land Policy and Management Act provides that the defendants shall review land withdrawals existing in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, determine whether continuation of these withdrawals is appropriate, and then report these recommendations to the President and, through the President, to the Congress.

25. Defendants have completed the land status actions enumerated in Exhibit A without prior submission of a recommendation to the President or the Congress.

26. Upon information and belief, defendants have terminated land withdrawals, including land classifications, other than those listed in Exhibit A, on lands within the western states enumerated in Section 204(1), without prior submission of a recommendation to the President or the Congress.

27. Defendants' failure to submit a recommendation to the President and the Congress prior to taking the land status actions enumerated in Exhibit A or other terminations of land classifications or land withdrawals is a violation of defendants' duties under Sections 204(1) and 701(c) of the Federal Land Policy and Management Act (43 U.S.C. §§ 1714(1), 1701(c)), and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706(2).

COUNT III

28. Pursuant to Section 302 of the Federal Land Policy and Management Act, defendants are required to manage the public lands according to principles of multiple use and sustained yield.

29. "Multiple use" is defined by Section 103(c) of the Federal Land Policy and Management Act (43 U.S.C. § 1702(c)) to mean:

a combination of balanced and diverse resources uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output,

including "the use of some land for less than all of the resources."

30. The Withdrawal Review Program emphasizes the availability of public lands for limited purposes, including mineral exploration and development, rather than multiple use as defined by the Act. In reliance on this program, defendants have opened millions of acres of public lands to mineral exploration and development.

31. Defendants' failure to adequately consider multiple uses of the lands reviewed under the Withdrawal Review Program constitutes a violation of defendants' duties under Sections 102(a)(7) and 302 of the Federal Land Policy and Management Act (43 U.S.C. §§ 1701(a)(7), 1732), and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706(2).

COUNT IV

32. Section 102(2)(c) of the National Environmental Policy Act (NEPA) requires all federal agencies, including defendant United States Department of the Interior, to "[i]nclude in every recommendation or report on . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement [commonly referred to as an environmental impact statement or EIS] by the responsible official on . . . the environmental impact of the proposed action. . . ." This provision imposes a mandatory duty upon the defendants to prepare an environmental impact statement on each individual land classification termination and land withdrawal revocation, on the cumulative effects of these actions, and on the Withdrawal Review Program itself.

33. Upon information and belief, defendants have not prepared environmental impact statements on the Withdrawal Review Program or any of its components including the land status actions enumerated in Exhibit A.

34. Defendants' failure to prepare such environmental impact statements in compliance with the Council on Environmental Quality's NEPA regulations (40 C.F.R. §§ 1500, *et seq.*) and the Department of the Interior NEPA procedures and regulations is a violation of defendants' duties under the National Environmental Policy Act, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706.

COUNT V

35. Section 310 of the Federal Land Policy and Management Act [sic] 43 U.S.C. § 1740), the Administrative Procedure Act, and the regulations adopted thereunder, require the defendants to promulgate rules and regulations implementing the land management objectives of the Federal Land Management and Policy Act.

36. Defendants have not promulgated regulations governing the revocation of withdrawals, including the termination of land classifications.

37. Defendants' failure to promulgate rules and regulations governing termination of land classifications and land withdrawals prior to taking such actions is a violation of defendants' duties under the Federal Land Policy and Management Act and the Administrative Procedure Act and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706.

38. Alternatively, Section 553 of the Administrative Procedure Act (5 U.S.C. § 553) requires Federal agencies to promulgate regulations only after the public has been given notice and been afforded a reasonable opportunity to comment on proposed regulations.

39. No regulations regarding terminations of land withdrawals, including land classifications, undertaken pursuant to the Federal Land Management and Policy Act have been

promulgated by defendants in accordance with the notice and comment provisions of the Administrative Procedure Act.

40. Defendants have instead issued various directives, instructional memoranda, manuals, and other documents providing information and guidance to defendants' employees and agents on the manner in which the land withdrawal review program should be conducted. The public was afforded no opportunity for comment on these documents.

41. Defendants' issuance of various documents constituting *de facto* regulations regarding land classification and land withdrawal terminations without public notice and opportunity for public comment is a violation of defendants' duties under the Administrative Procedure Act, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 551, *et seq.*

COUNT VI

42. On information and belief, defendants' decisions to terminate land classifications and land withdrawals, including those enumerated in Exhibit A, are not justified by the administrative record and are therefore in violation of the Administrative Procedure Act, and are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706(2).

COUNT VII

43. Defendants have provided no opportunity for public comment on, or other public participation or involvement in, their decisions regarding the Land Withdrawal Review Program.

44. For the land use status actions enumerated in Exhibit A, no notice of proposed action was published in the

Federal Register prior to the action being taken. No public comment was invited or considered.

45. Upon information and belief, defendants have terminated other withdrawals, including land classifications, without providing an opportunity for meaningful public participation. No notices of proposed action were published. No public comment was invited.

46. Defendants' failure to provide for public participation in the development of the Withdrawal Review Program, in the land use status actions enumerated in Exhibit A and other terminations of land classifications and other land withdrawals is a violation of defendants' duties under Sections 102(a)(5), 202(c)(9), 202(f), and 309(e) of the Federal Land Policy and Management Act (43 U.S.C. §§ 1701(a)(5), 1712(c)(9), 1712(f), 1739(e)) and of the Administrative Procedure Act, and the regulations promulgated thereunder, and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law. 5 U.S.C. § 706.

COUNT VIII

47. On information and belief, defendants' decisions to terminate land classifications and other land withdrawals, including those enumerated in Exhibit A, were not done in compliance with applicable regulations. Among other things, defendants' actions were not determined to be in conformity with the approved Resource Management Plans as required by 43 CFR § 1610.5-3 (1984), and where no applicable Resource Management Plan had been approved, defendants' actions were not supported by conformance determinations or other required documentation pursuant to 43 CFR § 1610.8 (1984).

48. Defendants' termination of land withdrawals, including land classifications, absent compliance with applicable regulations violated the defendants' duties pursuant

to those regulations, the Federal Land Policy and Management Act, and the Administrative Procedure Act, and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court:

(a) Adjudge and declare that defendants' Land Withdrawal Review program has been conducted in violation of applicable law and regulations.

(b) Enjoin the defendants from taking any action inconsistent with any withdrawal, classification, or other designation governing the use of public lands that was in effect on January 1, 1981, until such time as the defendants evaluate such actions in land use plans and environmental impact statements, submit such proposed actions to the President and Congress for review, and otherwise fully comply with applicable law and regulations. Among other things, the defendants should be enjoined from issuing leases; approving licences, mining plans, or plans of operations; selling, exchanging or otherwise disposing of land or interests in land; or granting easements or rights-of-way.

(c) Order that defendants reinstate all land classifications and other land withdrawals which were in existence on January 1, 1981, until such time as the defendants evaluate such actions in land use plans and environmental impact statements, submit such proposed actions to the President and Congress for review, and otherwise fully comply with applicable law and regulations;

(d) Order that defendants rescind all directives, instructional memoranda, manuals, or other documents providing information or guidance on the termination of land classifications or land withdrawals until such time as they have promulgated rules and regulations in accordance with applicable law and regulations;

(e) Grant the plaintiff its costs, disbursements, and attorneys fees; and

(f) Issue such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ [SIGNATURE ILLEGIBLE]

NORMAN L. DEAN, JR.

KATHLEEN C. ZIMMERMAN

National Wildlife Federation

1412 16th Street, N.W.

Washington, D.C. 20036

(202) 797-6817

Attorneys for Plaintiff

National Wildlife Federation

Dated: August 19, 1985

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 1985, I delivered a copy of the Amended Complaint for Declaratory and Injunctive Relief to Susan Cook and Pauline Milius, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C.

/s/ By [SIGNATURE ILLEGIBLE]

NORMAN L. DEAN, JR.

National Wildlife Federation

1412 16th Street, N.W.

Washington, D.C. 20036

(202) 797-6817

Attorney for Plaintiff

EXHIBIT A

National Wildlife Federation v. Burford
Land Withdrawal Review Actions Published in
the Federal Register Since January 1, 1981 (Revised)

No.	Federal Register Citation	State	Acres Affected
1	46 Federal Register 1734 (01/07/81)	OR	60.00
2	46 Federal Register 2048 (01/08/81)	AZ	43307.09
3	46 Federal Register 2046 (01/08/81)	CA	418.18
4	46 Federal Register 2046 (01/08/81)	NV	640.00
5	46 Federal Register 2047 (01/08/81)	OR	690.00
6	46 Federal Register 2047 (01/08/81)	OR	160.00
7	46 Federal Register 2047 (01/08/81)	OR	80.00
8	46 Federal Register 6942 (01/22/81)	AZ	42.77
9	46 Federal Register 6944 (01/22/81)	ID	40.00
10	46 Federal Register 6947 (01/22/81)	MT	80.00
11	46 Federal Register 6948 (01/22/81)	OR	40.00
12	46 Federal Register 6948 (01/22/81)	OR	80.00
13	46 Federal Register 6946 (01/22/81)	OR	440.00
14	46 Federal Register 6946 (01/22/81)	OR	40.00
15	46 Federal Register 6946 (01/22/81)	OR	40.00
16	46 Federal Register 6945 (01/22/81)	OR	6.24
17	46 Federal Register 6943 (01/22/81)	OR	80.00
18	46 Federal Register 6943 (01/22/81)	OR	289.28
19	46 Federal Register 6944 (01/22/81)	WA	680.00
20	46 Federal Register 7340 (01/23/81)	CA	1040.00
21	46 Federal Register 7341 (01/23/81)	CA	80.00
22	46 Federal Register 7345 (01/23/81)	ID	840.00
23	46 Federal Register 7346 (01/23/81)	ID	80.00
24	46 Federal Register 7343 (01/23/81)	MT	320.00
25	46 Federal Register 7343 (01/23/81)	MT	40.00
26	46 Federal Register 7345 (01/23/81)	NM	1360.00
27	46 Federal Register 7341 (01/23/81)	NV	80.00
28	46 Federal Register 7339 (01/23/81)	NM	53654.00
29	46 Federal Register 7347 (01/23/81)	MT	75.00
30	46 Federal Register 7344 (01/23/81)	OR	1635.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
31	46 Federal Register 7340 (01/23/81)	OR	140.00
32	46 Federal Register 7348 (01/23/81)	OR	9398.92
33	46 Federal Register 7346 (01/23/81)	OR	123.56
34	46 Federal Register 7346 (01/23/81)	OR	40.00
35	46 Federal Register 7345 (01/23/81)	OR	200.00
36	46 Federal Register 7343 (01/23/81)	OR	320.00
37	46 Federal Register 7338 (01/23/81)	UT	2302.91
38	46 Federal Register 7342 (01/23/81)	OR	160.00
39	46 Federal Register 7341 (01/23/81)	OR	120.00
40	46 Federal Register 7347 (01/23/81)	OR	200.00
41	46 Federal Register 7348 (01/23/81)	UT	4273.73
42	46 Federal Register 7349 (01/23/81)	UT	142.21
43	46 Federal Register 7348 (01/23/81)	UT	34265.00
44	46 Federal Register 7347 (01/23/81)	UT	160.00
45	46 Federal Register 7342 (01/23/81)	OR	46.53
46	46 Federal Register 8520 (01/27/81)	MT	120.00
47	46 Federal Register 9585 (01/29/81)	AK	15.54
48	46 Federal Register 14016 (02/25/81)	OR	120.00
49	46 Federal Register 14016 (02/25/81)	OR	3917.39
50	46 Federal Register 14189 (02/26/81)	AZ	4943.50
51	46 Federal Register 15216 (03/04/81)	UT	242.40
52	46 Federal Register 16137 (03/11/81)	CA	7144.00
53	46 Federal Register 18793 (03/26/81)	UT	
54	46 Federal Register 21836 (04/14/81)	WY	3790.66
55	46 Federal Register 23819 (04/28/81)	WY	125.28
56	46 Federal Register 26564 (05/13/81)	WA	237.80
57	46 Federal Register 27773 (05/20/81)	NM	4456048.00
58	46 Federal Register 27651 (05/21/81)	AZ	764.28
59	46 Federal Register 27651 (05/21/81)	ID	39231.37
60	46 Federal Register 27652 (05/21/81)	NV	78328.00
61	46 Federal Register 27653 (05/21/81)	OR	24.86
62	46 Federal Register 27653 (05/21/81)	WY	17.50
63	46 Federal Register 28166 (05/26/81)	AZ	1280.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
64	46 Federal Register 28163 (05/26/81)	CO	21993.30
65	46 Federal Register 28164 (05/26/81)	AZ	32245.51
66	46 Federal Register 28164 (05/26/81)	OR	40.00
67	46 Federal Register 28165 (05/26/81)	OR	200.00
68	46 Federal Register 28165 (05/26/81)	OR	12.51
69	46 Federal Register 28165 (05/26/81)	OR	30.00
70	46 Federal Register 28165 (05/26/81)	OR	11124.03
71	46 Federal Register 28167 (05/26/81)	OR	80.00
72	46 Federal Register 28167 (05/26/81)	UT	2543.45
73	46 Federal Register 28417 (05/27/81)	UT	60.00
74	46 Federal Register 28417 (05/27/81)	UT	68.66
75	46 Federal Register 28404 (05/27/81)	CA	120.00
76	46 Federal Register 28416 (05/27/81)	UT	272.00
77	46 Federal Register 28406 (05/27/81)	MT	850.77
78	46 Federal Register 28416 (05/27/81)	UT	44.99
79	46 Federal Register 28406 (05/27/81)	MT	160.00
80	46 Federal Register 28416 (05/27/81)	UT	313080.00
81	46 Federal Register 28405 (05/27/81)	MT	40.00
82	46 Federal Register 28418 (05/27/81)	WA	4.92
83	46 Federal Register 28406 (05/27/81)	NV	4280.00
84	46 Federal Register 28414 (05/27/81)	OR	77.31
85	46 Federal Register 28415 (05/27/81)	OR	275.11
86	46 Federal Register 28410 (05/27/81)	NM	400.00
87	46 Federal Register 28415 (05/27/81)	OR	80.00
88	46 Federal Register 28411 (05/27/81)	NM	240.00
89	46 Federal Register 28414 (05/27/81)	OR	60.00
90	46 Federal Register 28409 (05/27/81)	NV	2600.00
91	46 Federal Register 28413 (05/27/81)	OR	120.00
92	46 Federal Register 28409 (05/27/81)	NV	130.00
93	46 Federal Register 28413 (05/27/81)	OR	40.00
94	46 Federal Register 28412 (05/27/81)	OR	40.00
95	46 Federal Register 28415 (05/27/81)	OR	116.12
96	46 Federal Register 28411 (05/27/81)	OR	519.69

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
97	46 Federal Register 28413 (05/27/81)	OR	360.00
98	46 Federal Register 28411 (05/27/81)	OR	160.00
99	46 Federal Register 28418 (05/27/81)	WY	605.52
100	46 Federal Register 28517 (05/27/81)	NM	920000.00
101	46 Federal Register 28417 (05/27/81)	WA	125.91
102	46 Federal Register 28517 (05/27/81)	NM	605200.00
103	46 Federal Register 28404 (05/27/81)	CO	21998.87
104	46 Federal Register 28412 (05/27/81)	OR	40.00
105	46 Federal Register 28410 (05/27/81)	NM	50.00
106	46 Federal Register 28517 (05/27/81)	NM	123115.00
107	46 Federal Register 28407 (05/27/81)	NV	160.00
108	46 Federal Register 28414 (05/27/81)	OR	40.00
109	46 Federal Register 28405 (05/27/81)	MT	40.02
110	46 Federal Register 28515 (05/27/81)	ID	1079.00
111	46 Federal Register 28406 (05/27/81)	MT	240.00
112	46 Federal Register 28408 (05/27/81)	NV	73732.00
113	46 Federal Register 28410 (05/27/81)	NM	635.54
114	46 Federal Register 28414 (05/27/81)	OR	60.00
115	46 Federal Register 28412 (05/27/81)	OR	40.00
116	46 Federal Register 28652 (05/28/81)	CA	903.93
117	46 Federal Register 28754 (05/28/81)	NM	1053000.00
118	46 Federal Register 28656 (05/28/81)	OR	160.00
119	46 Federal Register 28651 (05/28/81)	CA	673.25
120	46 Federal Register 28655 (05/28/81)	OR	240.00
121	46 Federal Register 28654 (05/28/81)	CA	1027.83
122	46 Federal Register 28655 (05/28/81)	MT	160.00
123	46 Federal Register 28652 (05/28/81)	CA	240.00
124	46 Federal Register 28652 (05/28/81)	CA	15285.00
125	46 Federal Register 28655 (05/28/81)	CA	2080.00
126	46 Federal Register 28854 (05/29/81)	CA	185.00
127	46 Federal Register 28852 (05/29/81)	CA	195.88
128	46 Federal Register 28854 (05/29/81)	CA	640.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
129	46 Federal Register 28853 (05/29/81)	CA	650.50
130	46 Federal Register 28853 (05/29/81)	CA	16.47
131	46 Federal Register 28854 (05/29/81)	CA	77.22
132	46 Federal Register 28858 (05/29/81)	OR	339.89
133	46 Federal Register 28854 (05/29/81)	CA	39.94
134	46 Federal Register 28857 (05/29/81)	OR	40.00
135	46 Federal Register 28855 (05/29/81)	CA	40.00
136	46 Federal Register 28857 (05/29/81)	OR	160.00
137	46 Federal Register 28852 (05/29/81)	CA	4132.15
138	46 Federal Register 28953 (05/29/81)	NM	9177.00
139	46 Federal Register 28851 (05/29/81)	CA	163.34
140	46 Federal Register 28855 (05/29/81)	CA	2113.42
141	46 Federal Register 28857 (05/29/81)	MT	40.00
142	46 Federal Register 28953 (05/29/81)	NM	121.00
143	46 Federal Register 29263 (06/01/81)	OR	40.62
144	46 Federal Register 29510 (06/03/81)	MT	284.28
145	46 Federal Register 29710 (06/03/81)	UT	10985.22
146	46 Federal Register 29939 (06/04/81)	ID	80.00
147	46 Federal Register 29938 (06/04/81)	OR	40.00
148	46 Federal Register 29938 (06/04/81)	OR	599.50
149	46 Federal Register 29939 (06/04/81)	WA	8.17
150	46 Federal Register 29939 (06/04/81)	WY	239.04
151	46 Federal Register 29939 (06/04/81)	WA	400.00
152	46 Federal Register 31776 (06/17/81)	NM	19627.78
153	46 Federal Register 31776 (06/17/81)	NM	96069.00
154	46 Federal Register 31776 (06/17/81)	NM	1445108.00
155	46 Federal Register 31892 (06/18/81)	AZ	20.00
156	46 Federal Register 31947 (06/18/81)	NM	5516.52
157	46 Federal Register 31947 (06/18/81)	NM	31841.69
158	46 Federal Register 31892 (06/18/81)	NM	77.70
159	46 Federal Register 31893 (06/18/81)	OR	120.00
160	46 Federal Register 31892 (06/18/81)	OR	139.81

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
161	46 Federal Register 31893 (06/18/81)	OR	40.00
162	46 Federal Register 31894 (06/18/81)	OR	60.00
163	46 Federal Register 31894 (06/18/81)	OR	236.54
164	46 Federal Register 31894 (06/18/81)	OR	240.00
165	46 Federal Register 31895 (06/18/81)	OR	1500.00
166	46 Federal Register 31947 (06/18/81)	NM	
167	46 Federal Register 31947 (06/18/81)	WY	0.40
168	46 Federal Register 35504 (07/09/81)	AZ	189657.00
169	46 Federal Register 35507 (07/09/81)	SD	80.00
170	46 Federal Register 35510 (07/09/81)	MT	240.00
171	46 Federal Register 35509 (07/09/81)	OR	40.00
172	46 Federal Register 35508 (07/09/81)	MT	156.17
173	46 Federal Register 35509 (07/09/81)	OR	160.35
174	46 Federal Register 35503 (07/09/81)	ID	100.16
175	46 Federal Register 35508 (07/09/81)	WY	3559.79
176	46 Federal Register 35504 (07/09/81)	NV	374193.00
177	46 Federal Register 35504 (07/09/81)	ID	6165.37
178	46 Federal Register 35509 (07/09/81)	MT	1577.38
179	46 Federal Register 35510 (07/09/81)	MT	240.00
180	46 Federal Register 35507 (07/09/81)	NM	213.86
181	46 Federal Register 35507 (07/09/81)	WY	11.21
182	46 Federal Register 35504 (07/09/81)	NV	
183	46 Federal Register 39480 (08/03/81)	CA	5.00
184	46 Federal Register 39683 (08/04/81)	ID	50967.00
185	46 Federal Register 42199 (08/19/81)	UT	310600.00
186	46 Federal Register 42921 (08/25/81)	MT	114.00
187	46 Federal Register 43508 (08/28/81)	NV	1220.98
188	46 Federal Register 43508 (08/28/81)	NV	1731.71
189	46 Federal Register 43886 (09/01/81)	CA	298.00
190	46 Federal Register 44983 (09/09/81)	MT	3.79
191	46 Federal Register 44983 (09/09/81)	MT	120.00
192	46 Federal Register 44984 (09/09/81)	MT	80.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
193	46 Federal Register 45137 (09/10/81)	AZ	1000.00
194	46 Federal Register 45132 (09/10/81)	AZ	217624.26
195	46 Federal Register 45131 (09/10/81)	MT	60.00
196	46 Federal Register 45131 (09/10/81)	MT	155.38
197	46 Federal Register 45611 (09/14/81)	MT	45.62
198	46 Federal Register 45819 (09/15/81)	OR	19657.53
199	46 Federal Register 46134 (09/17/81)	WY	2367.16
200	46 Federal Register 46409 (09/18/81)	WY	132000.00
201	46 Federal Register 48670 (10/02/81)	CA	664.48
202	46 Federal Register 48671 (10/02/81)	CA	40.00
203	46 Federal Register 48670 (10/02/81)	AZ	320.90
204	46 Federal Register 48670 (10/02/81)	CA	40.00
205	46 Federal Register 48667 (10/02/81)	MT	3848.69
206	46 Federal Register 48667 (10/02/81)	NM	55.25
207	46 Federal Register 48668 (10/02/81)	NM	1680.00
208	46 Federal Register 48676 (10/02/81)	ID	2393.49
209	46 Federal Register 48676 (10/02/81)	OR	131.95
210	46 Federal Register 48672 (10/02/81)	ID	1360.00
211	46 Federal Register 48674 (10/02/81)	OR	680.00
212	46 Federal Register 48667 (10/02/81)	NM	157.48
213	46 Federal Register 48675 (10/02/81)	OR	662.89
214	46 Federal Register 48668 (10/02/81)	NM	95.20
215	46 Federal Register 48666 (10/02/81)	ID	200.00
216	46 Federal Register 48672 (10/02/81)	ID	239.94
217	46 Federal Register 48673 (10/02/81)	NM	40.00
218	46 Federal Register 48673 (10/02/81)	MT	112.00
219	46 Federal Register 48669 (10/02/81)	OR	400.00
220	46 Federal Register 48674 (10/02/81)	OR	200.17
221	46 Federal Register 48669 (10/02/81)	WY	30.00
222	46 Federal Register 48675 (10/02/81)	WA	1.00
223	46 Federal Register 48669 (10/02/81)	UT	1277.62
224	46 Federal Register 48995 (10/05/81)	WY	160.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
225	46 Federal Register 49649 (10/07/81)	AZ	10521657.00
226	46 Federal Register 49868 (10/08/81)	AZ	3484.00
227	46 Federal Register 49868 (10/08/81)	AZ	4000.00
228	46 Federal Register 49868 (10/08/81)	AZ	50.00
229	46 Federal Register 49871 (10/08/81)	CA	240.00
230	46 Federal Register 49869 (10/08/81)	CA	7949.00
231	46 Federal Register 49871 (10/08/81)	CA	56.00
232	46 Federal Register 49872 (10/08/81)	MT	80.00
233	46 Federal Register 49874 (10/08/81)	OR	150.00
234	46 Federal Register 49873 (10/08/81)	OR	179.31
235	46 Federal Register 49873 (10/08/81)	OR	1080.00
236	46 Federal Register 49872 (10/08/81)	OR	759.90
237	46 Federal Register 49874 (10/08/81)	OR	1459.56
238	46 Federal Register 49873 (10/08/81)	OR	390.86
239	46 Federal Register 49875 (10/08/81)	OR	187.46
240	46 Federal Register 49872 (10/08/81)	OR	360.00
241	46 Federal Register 49875 (10/08/81)	UT	226.98
242	46 Federal Register 49876 (10/08/81)	WA	5.50
243	46 Federal Register 49875 (10/08/81)	WA	40.00
244	46 Federal Register 49876 (10/08/81)	WY	80.13
245	46 Federal Register 49877 (10/08/81)	WY	7451.38
246	46 Federal Register 49876 (10/08/81)	WY	77.51
247	46 Federal Register 50541 (10/14/81)	WY	600.00
248	46 Federal Register 50857 (10/15/81)	NV	5.00
249	46 Federal Register 51050 (10/16/81)	WY	750000.00
250	46 Federal Register 51050 (10/16/81)	WY	467902.68
251	46 Federal Register 51246 (10/19/81)	FL	1.25
252	46 Federal Register 52039 (10/23/81)	WY	12.56
253	46 Federal Register 53164 (10/28/81)	CA	40.00
254	46 Federal Register 53164 (10/28/81)	CA	3370.00
255	46 Federal Register 53162 (10/28/81)	CA	34.00
256	46 Federal Register 53164 (10/28/81)	CA	0.24

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
257	46 Federal Register 53165 (10/28/81)	CO	40.00
258	46 Federal Register 53166 (10/28/81)	CO	320.00
259	46 Federal Register 53166 (10/28/81)	NM	9.66
260	46 Federal Register 53166 (10/28/81)	OR	160.84
261	46 Federal Register 53169 (10/28/81)	OR	40.00
262	46 Federal Register 53167 (10/28/81)	OR	24028.67
263	46 Federal Register 53168 (10/28/81)	OR	493.14
264	46 Federal Register 53168 (10/28/81)	OR	49.76
265	46 Federal Register 53169 (10/28/81)	UT	132.85
266	46 Federal Register 53163 (10/28/81)	UT	27.32
267	46 Federal Register 53167 (10/28/81)	OR	290.09
268	46 Federal Register 53168 (10/28/81)	OR	80.00
269	46 Federal Register 53169 (10/28/81)	OR	40.00
270	46 Federal Register 53162 (10/28/81)	OR	321.45
271	46 Federal Register 53167 (10/28/81)	OR	400.00
272	46 Federal Register 53169 (10/28/81)	UT	15.00
273	46 Federal Register 53170 (10/28/81)	WY	133.00
274	46 Federal Register 53171 (10/28/81)	WY	240.00
275	46 Federal Register 53169 (10/28/81)	UT	15.00
276	46 Federal Register 53170 (10/28/81)	WA	155.00
277	46 Federal Register 53163 (10/28/81)	CA	40.00
278	46 Federal Register 53165 (10/28/81)	CA	
279	46 Federal Register 53417 (10/29/81)	CA	16.47
280	46 Federal Register 53526 (10/29/81)	NV	27737.45
281	46 Federal Register 54345 (11/02/81)	OR	688.87
282	46 Federal Register 54344 (11/02/81)	OR	951.10
283	46 Federal Register 54345 (11/02/81)	OR	30.00
284	46 Federal Register 54344 (11/02/81)	OR	309.00
285	46 Federal Register 54345 (11/02/81)	WA	264.06
286	46 Federal Register 55012 (11/05/81)	CO	6589352.00
287	46 Federal Register 55265 (11/09/81)	ID	80.00
288	46 Federal Register 55265 (11/09/81)	NV	84142.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
289	46 Federal Register 56507 (11/17/81)	CA	3075.00
290	46 Federal Register 56508 (11/17/81)	UT	2330737.00
291	46 Federal Register 56666 (11/18/81)	WA	40.00
292	46 Federal Register 56667 (11/18/81)	WA	1011.00
293	46 Federal Register 56937 (11/19/81)	ID	40.00
294	46 Federal Register 56787 (11/19/81)	FL	39.93
295	46 Federal Register 56786 (11/19/81)	UT	928022.00
296	46 Federal Register 57289 (11/23/81)	CO	5096.28
297	46 Federal Register 57288 (11/23/81)	CO	3188.00
298	46 Federal Register 57289 (11/23/81)	CO	85.31
299	46 Federal Register 57290 (11/23/81)	OR	60.00
300	46 Federal Register 57290 (11/23/81)	OR	79.13
301	46 Federal Register 57290 (11/23/81)	OR	160.00
302	46 Federal Register 57763 (11/25/81)	ID	280.00
303	46 Federal Register 58192 (11/30/81)	NV	30347.60
304	46 Federal Register 58188 (11/30/81)	UT	4256.47
305	46 Federal Register 58188 (11/30/81)	UT	1299724.00
306	46 Federal Register 58188 (11/30/81)	NV	4256.00
307	46 Federal Register 58491 (12/02/81)	UT	80.00
308	46 Federal Register 58745 (12/03/81)	UT	312609.00
309	46 Federal Register 59542 (12/07/81)	OR	507.68
310	46 Federal Register 59974 (12/08/81)	UT	789.27
311	46 Federal Register 60276 (12/09/81)	OR	1151.36
312	46 Federal Register 61335 (12/16/81)	NV	1719.81
313	46 Federal Register 61335 (12/16/81)	OR	1040.00
314	46 Federal Register 62553 (12/24/81)	ID	439.12
315	46 Federal Register 62450 (12/24/81)	NM	160.00
316	46 Federal Register 62451 (12/24/81)	WA	80.00
317	46 Federal Register 63397 (12/31/81)	OR	12175.62
318	47 Federal Register 21 (01/04/82)	OR	7479.62
319	47 Federal Register 769 (01/07/82)	MT	160.00
320	47 Federal Register 857 (01/07/82)	UT	3035352.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
321	47 Federal Register 4352 (01/29/82)	OR	2370.76
322	47 Federal Register 5003 (02/03/82)	MT	1537000.00
323	47 Federal Register 5003 (02/03/82)	MT	184.00
324	47 Federal Register 5416 (02/05/82)	CO	5744.79
325	47 Federal Register 5420 (02/05/82)	CA	337.00
326	47 Federal Register 5419 (02/05/82)	CA	40.00
327	47 Federal Register 5417 (02/05/82)	CA	106871.00
328	47 Federal Register 5425 (02/05/82)	CA	2.00
329	47 Federal Register 5416 (02/05/82)	CO	240.00
330	47 Federal Register 5421 (02/05/82)	CO	441.47
331	47 Federal Register 5423 (02/05/82)	ID	83.98
332	47 Federal Register 5424 (02/05/82)	MT	40.00
333	47 Federal Register 5419 (02/05/82)	MT	80.00
334	47 Federal Register 5470 (02/05/82)	MT	175922.00
335	47 Federal Register 5422 (02/05/82)	NV	72.00
336	47 Federal Register 5418 (02/05/82)	NV	39310.00
337	47 Federal Register 5424 (02/05/82)	WY	75.90
338	47 Federal Register 5422 (02/05/82)	ND	640.00
339	47 Federal Register 5421 (02/05/82)	WY	156.32
340	47 Federal Register 5471 (02/05/82)	NV	420.00
341	47 Federal Register 5423 (02/05/82)	WA	10.95
342	47 Federal Register 5422 (02/05/82)	OR	0.77
343	47 Federal Register 5419 (02/05/82)	OR	42917.83
344	47 Federal Register 5418 (02/05/82)	WY	5.00
345	47 Federal Register 5471 (02/05/82)	NV	2.50
346	47 Federal Register 5424 (02/05/82)	OR	82.91
347	47 Federal Register 5421 (02/05/82)	OR	40.00
348	47 Federal Register 6099 (02/10/82)	ID	265000.00
349	47 Federal Register 6380 (02/11/82)	MT	1320.00
350	47 Federal Register 6429 (02/12/82)	AZ	12537.23
351	47 Federal Register 6646 (02/16/82)	WA	22.39
352	47 Federal Register 6852 (02/17/82)	CA	40.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
353	47 Federal Register 6856 (02/17/82)	CA	36.20
354	47 Federal Register 6851 (02/17/82)	CO	40.00
355	47 Federal Register 7002 (02/17/82)	NV	1405.91
356	47 Federal Register 6851 (02/17/82)	NV	80.00
357	47 Federal Register 6852 (02/17/82)	MT	156.26
358	47 Federal Register 6857 (02/17/82)	NV	240.00
359	47 Federal Register 7000 (02/17/82)	ID	74400.00
360	47 Federal Register 6851 (02/17/82)	NV	10.00
361	47 Federal Register 6854 (02/17/82)	CO	7126.80
362	47 Federal Register 6850 (02/17/82)	UT	242.96
363	47 Federal Register 6856 (02/17/82)	ID	90.00
364	47 Federal Register 6855 (02/17/82)	CO	2089.90
365	47 Federal Register 6855 (02/17/82)	MT	80.00
366	47 Federal Register 6858 (02/17/82)	ID	2042.14
367	47 Federal Register 6852 (02/17/82)	CA	176.33
368	47 Federal Register 6856 (02/17/82)	OR	3681.43
369	47 Federal Register 6850 (02/17/82)	UT	40.00
370	47 Federal Register 6857 (02/17/82)	UT	39916.00
371	47 Federal Register 6849 (02/17/82)	UT	1063.00
372	47 Federal Register 6853 (02/17/82)	WY	4603.00
373	47 Federal Register 7230 (02/18/82)	WA	41.60
374	47 Federal Register 7230 (02/18/82)	CA	54.25
375	47 Federal Register 7235 (02/18/82)	WA	157.50
376	47 Federal Register 7231 (02/18/82)	CA	555.00
377	47 Federal Register 7232 (02/18/82)	WA	49.30
378	47 Federal Register 7235 (02/18/82)	CA	5822.00
379	47 Federal Register 7237 (02/18/82)	OR	520.67
380	47 Federal Register 7234 (02/18/82)	OR	1882.57
381	47 Federal Register 7238 (02/18/82)	CO	820.00
382	47 Federal Register 7236 (02/18/82)	NV	538.15
383	47 Federal Register 7237 (02/18/82)	MT	160.00
384	47 Federal Register 7234 (02/18/82)	OR	520.53

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
385	47 Federal Register 7238 (02/18/82)	CO	150.00
386	47 Federal Register 7233 (02/18/82)	MT	120.00
387	47 Federal Register 7239 (02/18/82)	MT	320.00
388	47 Federal Register 7232 (02/18/82)	OR	32.81
389	47 Federal Register 7233 (02/18/82)	WY	2680.38
390	47 Federal Register 7232 (02/18/82)	AZ	10800.00
391	47 Federal Register 7231 (02/18/82)	CA	433.05
392	47 Federal Register 7236 (02/18/82)	CO	3006.00
393	47 Federal Register 7414 (02/19/82)	CO	29972.00
394	47 Federal Register 7763 (02/22/82)	WY	5.00
395	47 Federal Register 8865 (03/02/82)	WY	1300356.00
396	47 Federal Register 9293 (03/04/82)	OR	15000.00
397	47 Federal Register 9293 (03/04/82)	OR	9841.50
398	47 Federal Register 9293 (03/04/82)	OR	62500.00
399	47 Federal Register 9839 (03/08/82)	ID	140.00
400	47 Federal Register 9838 (03/08/82)	MT	552.24
401	47 Federal Register 9841 (03/08/82)	MT	440.14
402	47 Federal Register 9838 (03/08/82)	CO	0.57
403	47 Federal Register 9840 (03/08/82)	OR	224.48
404	47 Federal Register 9840 (03/08/82)	OR	80.00
405	47 Federal Register 9840 (03/08/82)	UT	8823.00
406	47 Federal Register 9838 (03/08/82)	WA	71.00
407	47 Federal Register 9839 (03/08/82)	WY	320.80
408	47 Federal Register 9841 (03/08/82)	WA	3.00
409	47 Federal Register 10213 (03/10/82)	WY	80.00
410	47 Federal Register 10214 (03/10/82)	MT	145.00
411	47 Federal Register 10213 (03/10/82)	NM	114.96
412	47 Federal Register 10214 (03/10/82)	OR	30.20
413	47 Federal Register 10214 (03/10/82)	OR	79.95
414	47 Federal Register 10215 (03/10/82)	OR	158.44
415	47 Federal Register 10296 (03/10/82)	OR	31825.11
416	47 Federal Register 10213 (03/10/82)	WA	160.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
417	47 Federal Register 10215 (03/10/82)	CO	40.00
418	47 Federal Register 10825 (03/12/82)	AZ	640.00
419	47 Federal Register 10826 (03/12/82)	CO	520.00
420	47 Federal Register 10826 (03/12/82)	UT	1023.50
421	47 Federal Register 10825 (03/12/82)	WY	161.00
422	47 Federal Register 11282 (03/16/82)	OR	40.00
423	47 Federal Register 11662 (03/18/82)	CA	74.52
424	47 Federal Register 11667 (03/18/82)	CA	0.13
425	47 Federal Register 11668 (03/18/82)	FL	
426	47 Federal Register 11665 (03/18/82)	MT	287.35
427	47 Federal Register 11676 (03/18/82)	ND	160.00
428	47 Federal Register 11665 (03/18/82)	OR	479.90
429	47 Federal Register 11670 (03/18/82)	CO	31514.00
430	47 Federal Register 11675 (03/18/82)	UT	40.00
431	47 Federal Register 11666 (03/18/82)	OR	2717.25
432	47 Federal Register 11663 (03/18/82)	UT	8761.08
433	47 Federal Register 11669 (03/18/82)	OR	1280.00
434	47 Federal Register 11670 (03/18/82)	UT	142.21
435	47 Federal Register 11673 (03/18/82)	NV	16.00
436	47 Federal Register 11667 (03/18/82)	MT	40.00
437	47 Federal Register 11669 (03/18/82)	OR	1129.86
438	47 Federal Register 11675 (03/18/82)	OR	1.56
439	47 Federal Register 11664 (03/18/82)	MT	1834.77
440	47 Federal Register 11671 (03/18/82)	WY	15676.55
441	47 Federal Register 11667 (03/18/82)	WY	7.05
442	47 Federal Register 11674 (03/18/82)	WA	180.10
443	47 Federal Register 11664 (03/18/82)	WA	2682.02
444	47 Federal Register 11666 (03/18/82)	WA	40.00
445	47 Federal Register 11871 (03/19/82)	OR	1360.00
446	47 Federal Register 12172 (03/22/82)	MT	13817.00
447	47 Federal Register 13052 (03/26/82)	WY	6440.52
448	47 Federal Register 13418 (03/30/82)	OR	98000.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
449	47 Federal Register 14157 (04/02/82)	MT	120.00
450	47 Federal Register 14158 (04/02/82)	MT	40.00
451	47 Federal Register 16107 (04/14/82)	ID	2918.86
452	47 Federal Register 16220 (04/15/82)	UT	985692.00
453	47 Federal Register 16221 (04/15/82)	UT	809400.00
454	47 Federal Register 16222 (04/15/82)	UT	56109.00
455	47 Federal Register 16220 (04/15/82)	UT	1097888.00
456	47 Federal Register 16221 (04/15/82)	UT	579069.00
457	47 Federal Register 16220 (04/15/82)	UT	1837400.00
458	47 Federal Register 16221 (04/15/82)	UT	2929000.00
459	47 Federal Register 16627 (04/19/82)	CO	1513.00
460	47 Federal Register 16628 (04/19/82)	OR	866.88
461	47 Federal Register 16682 (04/19/82)	NV	320.00
462	47 Federal Register 16626 (04/19/82)	WY	2278.38
463	47 Federal Register 17060 (04/21/82)	OR	3845.00
464	47 Federal Register 17117 (04/21/82)	UT	1365340.00
465	47 Federal Register 17818 (04/26/82)	MT	320.00
466	47 Federal Register 18054 (04/27/82)	UT	527000.00
467	47 Federal Register 18435 (04/29/82)	UT	1948.00
468	47 Federal Register 18679 (04/30/82)	MT	3.56
469	47 Federal Register 19344 (05/05/82)	ID	135.00
470	47 Federal Register 20590 (05/13/82)	OR	40.00
471	47 Federal Register 21547 (05/19/82)	FL	39.91
472	47 Federal Register 21547 (05/19/82)	ID	7857.08
473	47 Federal Register 21546 (05/19/82)	OR	200.00
474	47 Federal Register 21797 (05/20/82)	MT	127.25
475	47 Federal Register 21796 (05/20/82)	ID	200.15
476	47 Federal Register 23935 (06/02/82)	NV	48.00
477	47 Federal Register 24133 (06/03/82)	CA	0.48
478	47 Federal Register 24455 (06/04/82)	OR	23997.13
479	47 Federal Register 24452 (06/04/82)	NV	649.00
480	47 Federal Register 24452 (06/04/82)	OR	4857.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
481	47 Federal Register 25213 (06/10/82)	OR	17827.00
482	47 Federal Register 26029 (06/16/82)	MT	4875742.60
483	47 Federal Register 26129 (06/17/82)	WA	1.15
484	47 Federal Register 26131 (06/17/82)	CA	38.75
485	47 Federal Register 26130 (06/17/82)	WA	33.00
486	47 Federal Register 26130 (06/17/82)	MT	1280.00
487	47 Federal Register 26132 (06/17/82)	OR	920.00
488	47 Federal Register 26130 (06/17/82)	NV	1280.00
489	47 Federal Register 26132 (06/17/82)	UT	1314.00
490	47 Federal Register 26131 (06/17/82)	WA	623.93
491	47 Federal Register 26133 (06/17/82)	CA	40.00
492	47 Federal Register 26129 (06/17/82)	OR	92.78
493	47 Federal Register 27079 (06/23/82)	ID	92.00
494	47 Federal Register 27078 (06/23/82)	MT	783.13
495	47 Federal Register 27079 (06/23/82)	ID	160.00
496	47 Federal Register 27287 (06/24/82)	CO	40.00
497	47 Federal Register 27286 (06/24/82)	CA	937.89
498	47 Federal Register 27285 (06/24/82)	MT	0.39
499	47 Federal Register 27284 (06/24/82)	MT	120.00
500	47 Federal Register 27283 (06/24/82)	MT	70.38
501	47 Federal Register 27290 (06/24/82)	NM	320.00
502	47 Federal Register 27290 (06/24/82)	OR	7855.29
503	47 Federal Register 27285 (06/24/82)	OR	1866.89
504	47 Federal Register 27289 (06/24/82)	OR	1602.18
505	47 Federal Register 27286 (06/24/82)	UT	120.00
506	47 Federal Register 27290 (06/24/82)	WA	5160.00
507	47 Federal Register 27285 (06/24/82)	WA	484.31
508	47 Federal Register 27285 (06/24/82)	WA	128.65
509	47 Federal Register 27287 (06/24/82)	UT	4440.00
510	47 Federal Register 27287 (06/24/82)	CO	40.00
511	47 Federal Register 27623 (06/25/82)	WY	40.00
512	47 Federal Register 28382 (06/30/82)	CA	6526.80

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
513	47 Federal Register 28382 (06/30/82)	UT	136371.21
514	47 Federal Register 28656 (07/01/82)	SD	1600.00
515	47 Federal Register 28657 (07/01/82)	SD	55.00
516	47 Federal Register 28840 (07/01/82)	UT	1645062.00
517	47 Federal Register 29553 (07/09/82)	CA	31245.00
518	47 Federal Register 29846 (07/09/82)	UT	120.00
519	47 Federal Register 30878 (07/15/82)	OR	341700.00
520	47 Federal Register 31691 (07/22/82)	CA	40.00
521	47 Federal Register 31692 (07/22/82)	MT	2.50
522	47 Federal Register 31692 (07/22/82)	ID	37.50
523	47 Federal Register 31693 (07/22/82)	MT	317.37
524	47 Federal Register 32426 (07/27/82)	ID	80.00
525	47 Federal Register 32424 (07/27/82)	MT	1685.97
526	47 Federal Register 32425 (07/27/82)	OR	4710.62
527	47 Federal Register 32424 (07/27/82)	UT	3975.98
528	47 Federal Register 32488 (07/27/82)	OR	1800000.00
529	47 Federal Register 32711 (07/29/82)	NV	82248.00
530	47 Federal Register 32712 (07/29/82)	WA	714000.00
531	47 Federal Register 32801 (07/29/82)	WY	3820255.00
532	47 Federal Register 32800 (07/29/82)	WY	3641500.00
533	47 Federal Register 33325 (08/02/82)	ID	439200.96
534	47 Federal Register 33327 (08/02/82)	NV	5.00
535	47 Federal Register 34051 (08/05/82)	OR	4135000.00
536	47 Federal Register 34051 (08/05/82)	WA	4698.00
537	47 Federal Register 35352 (08/13/82)	OR	35950.00
538	47 Federal Register 35768 (08/17/82)	NM	35.45
539	47 Federal Register 35768 (08/17/82)	UT	3988505.00
540	47 Federal Register 36023 (08/18/82)	OR	17724.00
541	47 Federal Register 36023 (08/18/82)	OR	130960.00
542	47 Federal Register 36707 (08/23/82)	ID	635692.00
543	47 Federal Register 36713 (08/23/82)	OR	19875.00
544	47 Federal Register 36714 (08/23/82)	OR	25475.98

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
545	47 Federal Register 36713 (08/23/82)	OR	3438.13
546	47 Federal Register 36712 (08/23/82)	OR	2401435.30
547	47 Federal Register 36713 (08/23/82)	OR	320.00
548	47 Federal Register 36714 (08/23/82)	OR	15809.00
549	47 Federal Register 36980 (08/24/82)	WA	5099.00
550	47 Federal Register 37703 (08/26/82)	ID	2773.86
551	47 Federal Register 37703 (08/26/82)	ID	228290.38
552	47 Federal Register 37707 (08/26/82)	OR	186290.00
553	47 Federal Register 37707 (08/26/82)	OR	31380.00
554	47 Federal Register 38428 (08/31/82)	NV	30.00
555	47 Federal Register 38995 (09/03/82)	NV	1918636.00
556	47 Federal Register 39490 (09/08/82)	CA	320.00
557	47 Federal Register 39493 (09/08/82)	MT	1036.56
558	47 Federal Register 39492 (09/08/82)	CA	10.40
559	47 Federal Register 39494 (09/08/82)	MT	2778.11
560	47 Federal Register 39494 (09/08/82)	CA	960.00
561	47 Federal Register 39492 (09/08/82)	UT	1036.30
562	47 Federal Register 39493 (09/08/82)	ID	640.00
563	47 Federal Register 39495 (09/08/82)	MT	132.03
564	47 Federal Register 39491 (09/08/82)	ID	40.00
565	47 Federal Register 39492 (09/08/82)	CA	47094.00
566	47 Federal Register 39495 (09/08/82)	ID	200.00
567	47 Federal Register 39491 (09/08/82)	ID	2.88
568	47 Federal Register 39495 (09/08/82)	AK	2969659.00
569	47 Federal Register 39682 (09/09/82)	AZ	152793.89
570	47 Federal Register 39683 (09/09/82)	MT	80.00
571	47 Federal Register 39683 (09/09/82)	WA	5262.30
572	47 Federal Register 39827 (09/10/82)	CA	39.47
573	47 Federal Register 39824 (09/10/82)	CA	61.63
574	47 Federal Register 39825 (09/10/82)	MT	400.00
575	47 Federal Register 39825 (09/10/82)	WY	3851.66
576	47 Federal Register 39827 (09/10/82)	WY	2.50

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
577	47 Federal Register 40910 (09/16/82)	NV	40.00
578	47 Federal Register 42033 (09/23/82)	MT	25301.00
579	47 Federal Register 42032 (09/23/82)	MT	32.50
580	47 Federal Register 42362 (09/27/82)	AZ	346.34
581	47 Federal Register 42741 (09/29/82)	AK	31.73
582	47 Federal Register 42741 (09/29/82)	NV	194.00
583	47 Federal Register 43202 (09/30/82)	OR	67159.57
584	47 Federal Register 43953 (10/05/82)	AK	9600.00
585	47 Federal Register 45965 (10/14/82)	CA	5261.00
586	47 Federal Register 45966 (10/14/82)	ID	160.00
587	47 Federal Register 51799 (11/17/82)	CO	200.00
588	47 Federal Register 51799 (11/17/82)	ID	428300.00
589	47 Federal Register 51947 (11/18/82)	ID	1435.51
590	47 Federal Register 52571 (11/22/82)	NV	155800.00
591	47 Federal Register 52572 (11/22/82)	NV	1979960.00
592	47 Federal Register 52572 (11/22/82)	NV	28487520.00
593	47 Federal Register 53950 (11/30/82)	NV	2648040.00
594	47 Federal Register 54171 (12/01/82)	NV	3418900.00
595	47 Federal Register 54364 (12/02/82)	NV	5635160.00
596	47 Federal Register 54365 (12/02/82)	NV	1865500.00
597	47 Federal Register 54364 (12/02/82)	NV	6234280.00
598	47 Federal Register 56403 (12/16/82)	MT	15151.00
599	47 Federal Register 56408 (12/16/82)	UT	604370.00
600	47 Federal Register 56407 (12/16/82)	UT	
601	47 Federal Register 56562 (12/17/82)	NV	3112986.00
602	47 Federal Register 56562 (12/17/82)	NV	396935.00
603	47 Federal Register 56562 (12/17/82)	NV	1340.00
604	47 Federal Register 57275 (12/23/82)	AK	24.00
605	47 Federal Register 48382 (12/30/82)	CA	32660.00
606	48 Federal Register 1828 (01/14/83)	CA	1676.35
607	48 Federal Register 4559 (02/01/83)	MT	157.18
608	48 Federal Register 6037 (02/09/83)	UT	40.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
609	48 Federal Register 6037 (02/09/83)	WY	5792.33
610	48 Federal Register 6789 (02/15/83)	NV	80.00
611	48 Federal Register 9009 (03/03/83)	CA	40.00
612	48 Federal Register 9009 (03/03/83)	AZ	3828.31
613	48 Federal Register 9007 (03/03/83)	AZ	17559.28
614	48 Federal Register 9008 (03/03/83)	ID	1547.37
615	48 Federal Register 9008 (03/03/83)	OR	1025.17
616	48 Federal Register 9008 (03/03/83)	NM	160.00
617	48 Federal Register 9262 (03/04/83)	SD	20613.20
618	48 Federal Register 9643 (03/08/83)	MT	158.24
619	48 Federal Register 9864 (03/09/83)	MT	2722.28
620	48 Federal Register 12371 (03/24/83)	AZ	72.19
621	48 Federal Register 14597 (04/05/83)	WY	560.00
622	48 Federal Register 15193 (04/07/83)	ID	1720.37
623	48 Federal Register 15191 (04/07/83)	MT	96269.00
624	48 Federal Register 16685 (04/19/83)	MT	968.78
625	48 Federal Register 16684 (04/19/83)	ID	29.94
626	48 Federal Register 16685 (04/19/83)	OR	620.00
627	48 Federal Register 17081 (04/21/83)	CA	34.75
628	48 Federal Register 17145 (04/21/83)	SD	617.12
629	48 Federal Register 19082 (04/27/83)	CO	2177.25
630	48 Federal Register 19239 (04/28/83)	WY	400.00
631	48 Federal Register 19249 (04/28/83)	WY	2.50
632	48 Federal Register 19938 (05/03/83)	ND	7914.09
633	48 Federal Register 20294 (05/05/83)	MT	40.00
634	48 Federal Register 22149 (05/17/83)	CA	790.20
635	48 Federal Register 22152 (05/17/83)	CO	27.97
636	48 Federal Register 22151 (05/17/83)	ID	120.00
637	48 Federal Register 22153 (05/17/83)	NV	5120.00
638	48 Federal Register 22151 (05/17/83)	OR	160.45
639	48 Federal Register 22150 (05/17/83)	UT	3360.00
640	48 Federal Register 22152 (05/17/83)	UT	550.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
641	48 Federal Register 22149 (05/17/83)	WY	13470.59
642	48 Federal Register 22151 (05/17/83)	WY	226.75
643	48 Federal Register 22323 (05/24/83)	CO	1066680.00
644	48 Federal Register 23225 (05/24/83)	UT	785850.04
645	48 Federal Register 22324 (05/24/83)	WY	21519.00
646	48 Federal Register 23223 (05/24/83)	NV	0.60
647	48 Federal Register 23639 (05/26/83)	MN	20471.67
648	48 Federal Register 26315 (06/07/83)	NM	63849.03
649	48 Federal Register 29693 (06/28/83)	CA	40.00
650	48 Federal Register 29693 (06/28/83)	CA	6117.88
651	48 Federal Register 29695 (06/28/83)	CA	920.00
652	48 Federal Register 29697 (06/28/83)	UT	825.00
653	48 Federal Register 29696 (06/28/83)	WA	0.20
654	48 Federal Register 29697 (06/28/83)	WY	75.00
655	48 Federal Register 29694 (06/28/83)	WY	25402.38
656	48 Federal Register 29694 (06/28/83)	CA	284.00
657	48 Federal Register 29696 (06/28/83)	CA	60.00
658	48 Federal Register 30119 (06/30/83)	CA	3247.74
659	48 Federal Register 25010 (07/03/83)	NV	16725.49
660	48 Federal Register 32826 (07/19/83)	AK	217.00
661	48 Federal Register 32827 (07/19/83)	AK	0.40
662	48 Federal Register 32828 (07/19/83)	CA	19.05
663	48 Federal Register 32824 (07/19/83)	CA	13130.40
664	48 Federal Register 32826 (07/19/83)	CA	40.00
665	48 Federal Register 32829 (07/19/83)	ID	367.40
666	48 Federal Register 32828 (07/19/83)	MT	40.00
667	48 Federal Register 32827 (07/19/83)	CO	40.00
668	48 Federal Register 32876 (07/19/83)	NV	170003.02
669	48 Federal Register 32875 (07/19/83)	NV	1609629.00
670	48 Federal Register 32830 (07/19/83)	OR	40.00
671	48 Federal Register 32829 (07/19/83)	OR	280.00
672	48 Federal Register 32829 (07/19/83)	OR	237.50

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
673	48 Federal Register 32827 (07/19/83)	UT	20.00
674	48 Federal Register 32830 (07/19/83)	OR	40.00
675	48 Federal Register 33301 (07/21/83)	CA	129027.00
676	48 Federal Register 33301 (07/21/83)	AK	3539.00
677	48 Federal Register 33295 (07/21/83)	CO	40.00
678	48 Federal Register 33297 (07/21/83)	ID	320.00
679	48 Federal Register 33296 (07/21/83)	ID	160.00
680	48 Federal Register 33296 (07/21/83)	ID	191.50
681	48 Federal Register 33297 (07/21/83)	ID	274.75
682	48 Federal Register 33298 (07/21/83)	OR	2257.00
683	48 Federal Register 33298 (07/21/83)	OR	492.06
684	48 Federal Register 33297 (07/21/83)	OR	975.00
685	48 Federal Register 33299 (07/21/83)	OR	90.36
686	48 Federal Register 33299 (07/21/83)	UT	39288.47
687	48 Federal Register 33366 (07/21/83)	WY	179.00
688	48 Federal Register 33712 (07/25/83)	AK	257.00
689	48 Federal Register 33716 (07/25/83)	AZ	23026.52
690	48 Federal Register 33717 (07/25/83)	ID	37.92
691	48 Federal Register 33716 (07/25/83)	CA	104.13
692	48 Federal Register 33712 (07/25/83)	OR	1791.93
693	48 Federal Register 33713 (07/25/83)	AK	46080.00
694	48 Federal Register 33717 (07/25/83)	CA	240.00
695	48 Federal Register 33710 (07/25/83)	CA	1117.61
696	48 Federal Register 33717 (07/25/83)	CO	240.00
697	48 Federal Register 33711 (07/25/83)	ID	260.00
698	48 Federal Register 33715 (07/25/83)	AK	484.02
699	48 Federal Register 33714 (07/25/83)	AK	1596.00
700	48 Federal Register 33711 (07/25/83)	ID	160.00
701	48 Federal Register 34268 (07/28/83)	WA	6557.22
702	48 Federal Register 34524 (07/29/83)	NV	196420.00
703	48 Federal Register 34743 (08/01/83)	ID	143235.90
704	48 Federal Register 36212 (08/09/83)	NV	585033.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
705	48 Federal Register 36213 (08/09/83)	NV	213.00
706	48 Federal Register 38240 (08/23/83)	CO	120.00
707	48 Federal Register 38239 (08/23/83)	AK	1630.00
708	48 Federal Register 38468 (08/24/83)	WY	136359.00
709	48 Federal Register 39999 (09/02/83)	CO	33.79
710	48 Federal Register 40724 (09/09/83)	NM	223580.71
711	48 Federal Register 43176 (09/22/83)	AZ	2388.00
712	48 Federal Register 43175 (09/22/83)	OR	32.99
713	48 Federal Register 43176 (09/22/83)	OR	47269.14
714	48 Federal Register 43175 (09/22/83)	OR	362.11
715	48 Federal Register 43175 (09/22/83)	OR	40.00
716	48 Federal Register 43176 (09/22/83)	WA	1898.74
717	48 Federal Register 44540 (09/29/83)	AZ	13172.00
718	48 Federal Register 44539 (09/29/83)	AZ	41.80
719	48 Federal Register 44539 (09/29/83)	AZ	1675.00
720	48 Federal Register 42741 (09/29/83)	NV	194.31
721	48 Federal Register 44938 (09/30/83)	NV	2880565.00
722	48 Federal Register 44786 (09/30/83)	UT	19801.06
723	48 Federal Register 45401 (10/05/83)	AZ	2918.64
724	48 Federal Register 45395 (10/05/83)	AK	5697148.00
725	48 Federal Register 45393 (10/05/83)	NV	20.00
726	48 Federal Register 45394 (10/05/83)	WY	108.97
727	48 Federal Register 45394 (10/05/83)	AZ	
728	48 Federal Register 45608 (10/06/83)	CO	15397.35
729	48 Federal Register 45619 (10/06/83)	CO	65.00
730	48 Federal Register 45618 (10/06/83)	CO	543.68
731	48 Federal Register 45620 (10/06/83)	CO	120.00
732	48 Federal Register 45559 (10/06/83)	WA	113.65
733	48 Federal Register 46107 (10/11/83)	MT	80.00
734	48 Federal Register 46049 (10/11/83)	OR	15814.29
735	48 Federal Register 46050 (10/11/83)	OR	11543.36
736	48 Federal Register 46105 (10/11/83)	NV	4315592.00

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
737	48 Federal Register 46049 (10/11/83)	UT	40.00
738	48 Federal Register 46627 (10/13/83)	ID	1186700.00
739	48 Federal Register 49022 (10/24/83)	ID	920.00
740	48 Federal Register 50896 (11/04/83)	CA	7439.00
741	48 Federal Register 50895 (11/04/83)	CO	641.76
742	48 Federal Register 50893 (11/04/83)	OR	5631.80
743	48 Federal Register 50894 (11/04/83)	WY	80.00
744	48 Federal Register 50894 (11/04/83)	WY	2553.29
745	48 Federal Register 50895 (11/04/83)	WA	188.09
746	48 Federal Register 53182 (11/25/83)	WY	2215.68
747	48 Federal Register 54618 (12/06/83)	CA	39718.23
748	48 Federal Register 56586 (12/22/83)	ID	279.30
749	48 Federal Register 56754 (12/23/83)	NM	280.00
750	49 Federal Register 2114 (01/18/84)	MI	9.65
751	49 Federal Register 3856 (01/31/84)	MT	7756.35
752	49 Federal Register 3859 (01/31/84)	AZ	4.53
753	49 Federal Register 3859 (01/31/84)	OR	120.00
754	49 Federal Register 3860 (01/31/84)	OR	30.53
755	49 Federal Register 3858 (01/31/84)	NV	40.24
756	49 Federal Register 3860 (01/31/84)	OR	320.00
757	49 Federal Register 3858 (01/31/84)	ID	400.00
758	49 Federal Register 3859 (01/31/84)	OR	66.00
759	49 Federal Register 4478 (02/07/84)	WY	13.30
760	49 Federal Register 4477 (02/07/84)	OR	15861.17
761	49 Federal Register 4478 (02/07/84)	OR	2997.50
762	49 Federal Register 4478 (02/07/84)	CO	40.00
763	49 Federal Register 4853 (02/08/84)	MT	280.00
764	49 Federal Register 5755 (02/15/84)	AZ	490454.00
765	49 Federal Register 5926 (02/16/84)	OR	47.30
766	49 Federal Register 5924 (02/16/84)	NM	17.50
767	49 Federal Register 5924 (02/16/84)	ID	34850.75
768	49 Federal Register 5923 (02/16/84)	MT	842.92

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
769	49 Federal Register 6907 (02/24/84)	OR	2577.24
770	49 Federal Register 7807 (03/02/84)	NV	172608.00
771	49 Federal Register 12264 (03/29/84)	AK	613.19
772	49 Federal Register 13204 (04/03/84)	ID	779365.50
773	49 Federal Register 17502 (04/24/84)	OR	1805.00
774	49 Federal Register 19904 (05/10/84)	WY	2075788.53
775	49 Federal Register 19906 (05/10/84)	ID	711835.00
776	49 Federal Register 20001 (05/11/84)	AK	499606.00
777	49 Federal Register 20497 (05/15/84)	WA	1219.29
778	49 Federal Register 26052 (05/26/84)	WA	279.46
779	49 Federal Register 26053 (05/26/84)	CA	109.06
780	49 Federal Register 23701 (06/07/84)	CA	135646.00
781	49 Federal Register 24601 (06/14/84)	ID	129189.12
782	49 Federal Register 29601 (06/23/84)	CA	281.41
783	49 Federal Register 29600 (06/23/84)	UT	38.29
784	49 Federal Register 26052 (06/26/84)	OR	911.00
785	49 Federal Register 26231 (06/27/84)	CO	40.00
786	49 Federal Register 28933 (07/17/84)	UT	
787	49 Federal Register 28932 (07/17/84)	CA	1174232.00
788	49 Federal Register 31695 (08/08/84)	AZ	6.40
789	49 Federal Register 32808 (08/16/84)	ID	561087.00
790	49 Federal Register 35773 (09/12/84)	CO	80.00
791	49 Federal Register 36571 (09/18/84)	CO	49.29
792	49 Federal Register 37182 (09/21/84)	CA	73422.00
793	49 Federal Register 37183 (09/21/84)	CA	232920.00
794	49 Federal Register 37759 (09/26/84)	MT	35.00
795	49 Federal Register 37759 (09/26/84)	ID	120.00
796	49 Federal Register 36856 (09/26/84)	AZ	62000.00
797	49 Federal Register 37760 (09/26/84)	MI	3500.00
798	49 Federal Register 38202 (09/27/84)	CA	29693.00
799	49 Federal Register 40031 (10/12/84)	CO	320.00
800	49 Federal Register 40406 (10/16/84)	MT	2750.10

EXHIBIT A - Continued

No.	Federal Register Citation	State	Acres Affected
801	49 Federal Register 40406 (10/16/84)	CA	540.00
802	49 Federal Register 40407 (10/16/84)	UT	40.00
803	49 Federal Register 42934 (10/25/84)	CA	1076.72
804	49 Federal Register 46144 (11/23/84)	WY	1533.10
805	49 Federal Register 46145 (11/23/84)	MT	120.00
806	49 Federal Register 46959 (11/29/84)	WY	10.00
807	50 Federal Register 895 (01/07/85)	CA	539586.00
808	50 Federal Register 2251 (01/17/85)	MT	99.00
809	50 Federal Register 3760 (01/28/85)	AR	0.62
810	50 Federal Register 4215 (01/30/85)	AK	288.47
811	50 Federal Register 4599 (01/31/85)	CA	520.00
812	50 Federal Register 4600 (01/31/85)	CA	48088.00
813	50 Federal Register 4599 (01/31/85)	CA	264377.00
814	50 Federal Register 5262 (02/07/85)	ID	40.00
*** Total ***			169236048.16

BLM WITHDRAWAL REVIEW PROGRAM

A Report of Progress to the
National Public Lands Advisory Council
Klamath Falls, Oregon
May 1985

U.S. Department of the Interior
Bureau of Land Management

**Status Report
Withdrawal Review**

The figures below show the amount of acreage reported to the National Public Lands Advisory Council on March 21, 1985, and the updated acreage figures as of April 30, 1985.

I. Withdrawn Acreage Proposed for Termination or Continuation through BLM Field Review under Section 204(l) of FLPMA (January 1981-April 1985).

	<i>Acreage Proposed for Opening to:</i>			<i>Mineral Leasing</i>
	<i>Surface</i>	<i>Mining</i>		
3/85				
Current	31,000,000	29,042,287		4,620,299
	34,023,084	29,047,316		4,620,846

II. Acreage of Withdrawals Actually Revoked under Section 204(a), (January 1981 thru April 1985)

	<i>Acreage Opening to:</i>			<i>Mineral Leasing</i>
	<i>Surface</i>	<i>Mining</i>		
3/85				
Cur.	20,600,000	5,461,144		6,268,967
	20,699,202	5,997,706		6,286,913

III. Acreage of Classifications Actually Terminated under Section 202(d) (January 1981 thru April 1981)

	<i>Acreage Opening to:</i>			<i>Mineral Leasing</i>
	<i>Surface</i>	<i>Mining</i>		
3/85				
Cur.	523,856,251	66,161,111		687,511
	523,714,951	66,188,828		687,511

¹ These figures represent review of waterpower withdrawals, previously identified with USGS/MMS.
² Includes NOAA, NPS, GSA, VA, BIA, and NASA.
³ The March 1985 report was 15,012,996 acres.

OTHER	1985	1986	1987	1988	1989	1990	TOTAL
AGENCIES:	1,129	4,633	-	-	-	-	2
TOTALS	4,805,016	2,130,722	3,337,127	1,403,377	2,203,206	999,609	14,879

AGENCY	1985	1986	1987	1988	1989	1990	TOTAL
BLM ¹	485,484	667,600	552,900	687,200	834,500	770,300	3,997
BR	929,591	889,209	969,908	248,146	353,111	203,816	3,593
AIR FORCE	21,587	121,015	-	-	3,768	-	146
ARMY	2,721,489	20,199	902,256	133,325	787,509	25,260	4,590
COE (civilian)	62,856	65	8,797	-	-	-	71
NAVY	102,659	1,048	-	-	-	-	103
CG	1,356	135	22	39	140	33	1
FAA	2,637	600	40	180	171	-	3
FS	424,984	360,708	689,260	334,487	219,421	-	2,028
DOE	49,979	68,560	3	-	-	-	118
DOA/ARS	5	-	213,671	-	-	-	213
STATE/IBWC	1,260	-	-	-	4,586	200	6

IV.

WITHDRAWAL REVIEW SCHEDULES

FY 1985 to 1990

(in acres)

V. New Withdrawal Activity (Figures include pre- and post-FLPMA totals)

<i>Agency</i>	<i>Acres Withdrawn Since January 1981</i>	<i>Acres Pending Withdrawal</i>
BLM	148,994	1,483,127 ¹
BR	67,036	158,301
FWS	6,282	3,245,461
DOA (FS, SCS)	1,552,823 ²	141,860
DOD	6,298	7,734,193
GSA		18
NOAA		8,507
BIA		40
NPS		5,655
HUD	6	
FAA		43
DOT		1,292
DOE	8,960	2,555
DOJ	90	11
VA	158	
USGS		101
	<u>1,790,647³</u>	<u>12,781,164³</u>

¹ Includes 87,416 acre pending emergency withdrawal, Fort Union coal.

² Includes 1,537,000 acre emergency withdrawal in Bob Marshall, Wilderness, Forest Service, later revoked. (This revocation is included in total for Item III.)

³ The March 1985 report was for 12,784,113 acres.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

Civil No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, DONALD P. HODEL, AND UNITED
STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS

AFFIDAVIT 1A OF FRANK EDWARDS

1. I, Frank Edwards, Assistant Director, Land Resources, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C., hereby declare under penalty of perjury that the information contained in this affidavit is true and accurate to the best of my knowledge. The documents referred to in this affidavit are under my direction and control. I have held the position of Assistant Director since October 1982 and have been employed by the Bureau of Land Management for about 29 years. Based upon my past employment with the Bureau and my current job responsibilities, I am familiar with the subject matter of this affidavit and the Bureau procedures and data relating to it.

2. In this affidavit I will discuss the FLPMA section 204(a) authority to revoke withdrawals in relation to federal land withdrawals.

**INTERIOR'S GENERAL AUTHORITY TO
REVOKE WITHDRAWALS**

3. Before the passage of FLPMA, general land withdrawal authority, including the authority to revoke

withdrawals was vested in the President. This authority was delegated to the Secretary of the Interior by Executive Order No. 10355 of May 26, 1952, 17 F.R. 4831. (Exhibit 1). FLPMA repealed the President's general withdrawal authority and in FLPMA Congress granted to the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals.

4. In 1980, the Office of the Solicitor of the Department of the Interior concluded that the withdrawal review and termination provisions of FLPMA § 204(f) were self-contained and that it was not necessary that all actions taken to end withdrawals be made subject to those provisions. (Exhibit 2). Individual proposed revocations arising in the ordinary course of business of the holding agency, that is to say the agency having administrative jurisdiction over the withdrawn lands, could be processed to completion, pursuant to the separate revocation authority of the Secretary under section 204(a). On the other hand, withdrawals that were subject to the review provisions of FLPMA § 204(f) could not be brought to an end using the Secretary's revocation authority under FLPMA § 204(a).

THE STEPS TAKEN NORMALLY TO REVOKE A WITHDRAWAL UNDER FLPMA SECTION 204(a)

5. In the past, withdrawal revocations have been initiated by one of three means: a) Departments or agencies holding withdrawals which they no longer need will file a notice of intention to relinquish the reserved lands with the Bureau of Land Management. b) Any member of the public could file a petition requesting revocation of a withdrawal. Now, any member of the public may file a petition to restore and open public lands to the mining laws in cases where the lands are withdrawn for power purposes or reclamation projects. c) In the case of Bureau of Land Management lands that have been previously

withdrawn from the operation of the public land laws and where that protection is no longer required, BLM itself can initiate a revocation proposal. The notice of relinquishment process is set forth in 43 C.F.R. Subpart 2370. The regulations are supplemented by further instructions found in Bureau of Land Management Manual Part 2372. (Exhibit 3).

6. With regard to relinquishments by holding agencies, they are processed in the following manner. Upon receipt of the notice, the Bureau of Land Management's State office will review its contents for regulatory compliance and determine if the information in the notice is sufficient to support the proposed return of the land to Interior's jurisdiction. The State office also will undertake a land status check, based on the federal land records maintained in that office. Additionally, the State office will take whatever steps are necessary to be assured that the official filing the notice was duly authorized and empowered to do so. When these steps have been taken, the notice and the nucleus of the case file will become part of the existing withdrawal case and forwarded to the correct district manager for further processing.

7. The district manager will analyze the sufficiency of the information contained in or accompanying the notice of intention to relinquish. The district manager will make such investigations and undertake such negotiations as are necessary to determine whether the lands have been substantially changed in character by improvements or otherwise and whether the lands are in need of decontamination or protective measures. If so, he will negotiate the terms and conditions for an acceptable agreement for decontamination or protection of the lands. If the lands or resources have been disturbed, the district manager may also negotiate the terms and conditions for an acceptable agreement for reconditioning the lands. Also, if the lands

have been substantially changed in character by improvements or otherwise, determination is made as to whether minerals in the land are suitable for disposition under the mining and mineral laws.

8. The foregoing investigations and negotiations are summarized and incorporated into a land report. Land reports are required for all realty actions. In the case of proposed withdrawal relinquishments and revocations, the land report addresses: where the lands are located, precisely what they have been withdrawn from, why revocation would be appropriate, and to what extent the lands would be opened; a description of the character of the lands; a statement regarding present and expected post revocation land actions or uses; a mineral report, if appropriate; and compliance with the National Environmental Policy Act of 1969 (NEPA). If a recommendation is made not to proceed with a proposed relinquishment and revocation, the report must contain an explanation for the recommendation. Further details as to the revocation process are set forth in Organic Act Directive No. 81-10, dated May 15, 1981. (Exhibit 4).

9. Following completion of the land report, the case file containing it and other documents assembled in processing the proposed relinquishment are returned to the State office with the district manager's recommendation. The State Director will recommend whether the withdrawn land should be returned to Interior's jurisdiction, following revocation, and will inform the holding agency of the recommendation. In some instances the Bureau will condition acceptance of the relinquishment upon the holding agency's compliance with certain specified conditions. The General Services Administration is notified of the Bureau's decision. 43 C.F.R. Part 2370.

10. If it recommends that the reserved lands be relinquished and that the withdrawal be revoked, the State of-

fice prepares a draft public land order (PLO) and a draft transmittal memorandum that will accompany the land report and the order to the Secretary. These documents are submitted to the Regional Solicitor for review. After review for legal sufficiency by the Regional Solicitor, the holding agency is notified in writing that the lands have been found suitable for restoration to their former (pre-withdrawal) status. Thereafter, the case file containing the land report and other documents are forwarded to the Director of the Bureau of Land Management here in Washington, D.C.

11. The Director reviews the submissions from the State Director to ensure compliance with program policy guidance and manual direction. If needed, adjustments are made in the draft public land order. The Solicitor's Office reviews the proposed public land order as to its suitability for the exercise of FLPMA § 204(a) revocation authority. The public land order, then, is forwarded to the Assistant Secretary for Land and Minerals Management along with the Bureau of Land Management's recommendation, transmittal memorandum. The Assistant Secretary reviews these documents, and if he concurs, the public land order revoking the withdrawal will be signed and sent on for publication in the *Federal Register*.

12. Basically, the same process is followed in the case of BLM-initiated revocations, except that since the lands are already under Interior's jurisdiction and control, it is not, of course, necessary to follow all of the relinquishment procedures.

13. Petitions for withdrawal revocations are no longer serialized by the Bureau and treated in accordance with the procedures outlined in the Bureau of Land Management's Manual Part 2371. Instead, such requests are treated as an indication of interest in public land management and land use planning. Therefore, they are referred to the ap-

propriate field office for consideration as public input into the land use planning process under FLPMA § 202. In this regard, reference may be made to Instruction Memorandum No. 78-233 dated May 1, 1978 (Exhibit 5).

14. The Solicitor's review mentioned above in paragraph 11 was initiated during January of 1983. (Exhibit 6). In brief, a case file will be processed as a FLPMA § 204(a) revocation, as opposed to a FLPMA § 204(f) withdrawal review case file, if: (1) a notice of intention to relinquish was filed before 1980 and there is nothing in the file presented for review to indicate that the relinquishment request was undertaken in anticipation of having to comply with the withdrawal review requirements of FLPMA § 204(f); (2) the lands included in the withdrawal that would be revoked are not located in a FLPMA § 204(f) state (i.e., Alaska or one of the eastern states); (3) the proposed withdrawal revocation pertains to either Bureau of Land Management or U.S. Forest Service lands that are not closed to mining and/or the Mineral Leasing Laws. (e.g., a stock driveway withdrawal); (4) the request to revoke has been brought about in the ordinary course of business of the holding agency (usually this occurs in order to facilitate another land transaction such as an exchange, a sale, or a state in-lieu selection, which could not proceed without revoking the withdrawal); (5) the revocation action is required by an act of Congress; (6) the revocation action is merely a formality to clear the records as to lands that before the enactment of FLPMA had been conveyed out of federal ownership, without concurrent action having been taken to properly conform the land records.

15. Prior to the development in 1978 of categorical exclusions (CEs) by the President's Council on Environmental Quality, 40 C.F.R. 1500 *et seq.*, and the Bureau's development of its CEs in 1981, the Bureau used environmental assessments (EAs) as the principal mechanism

for achieving NEPA compliance in implementing its Section 204(a) authority. As more EAs were prepared, it became clear that they were showing that the mere revocation of a withdrawal did not have a significant impact upon the quality of the human environment.

16. On December 15, 1980, the Bureau published (45 F.R. 82367) its proposed CEs and requested public comment. (Exhibit 7). Six of the proposed CEs related to proposed withdrawal revocations. Six comments were received, including one by the National Wildlife Federation dated January 12, 1981 (Exhibit 8). The Federation commented on three of the proposed CEs, opposed two (where the Secretary is fulfilling a mandatory duty and has no discretion, and where future land actions would be subject to NEPA compliance), supported one (where lands are open to mining but the land has no known mineral value), and were silent on the rest.

17. With some slight modifications, the CEs were issued in final form on January 23, 1981. 46 F.R. 7492. (Exhibit 9). The Federation made no further comment. On December 9, 1981, the Bureau proposed additional CEs and published them for public comment. 46 F.R. 60278. (Exhibit 10). On January 25, 1982, the Federation commented on the proposed CEs, but made no comment on any of the CEs relevant to this case.

POST REVOCATION STATUS OF LANDS INCLUDED IN A SECTION 204(a) WITHDRAWAL REVOCATION

18. The consequences of revoking a withdrawal vary considerably depending upon individual circumstances. In many cases there will be no change whatsoever. Basically, there are two reasons for this. The lands may be subject to another withdrawal of comparable scope or they may be subject to classification segregations tantamount to such a withdrawal. In that case, the lands would not be opened to

the operation of the public land laws so that the removal of one of the withdrawals has no practical effect. Another reason why there may not be any change is that before the revocation occurred, the lands may have been transferred into private ownership. Consequently, the withdrawal revocation amounts to nothing more than a paper transaction with no substantive impact.

19. In the alternative, a revoked withdrawal may open the lands to the operation of the public land and mineral laws.

20. Some withdrawal revocations are made without prior knowledge as to what subsequent disposition may be made of the lands. After the lands are opened, they might be transferred out of federal ownership by sale, exchange, or some other discretionary mode of disposal, not anticipated when the withdrawal was revoked. These subsequent discretionary actions require separate and independent decisionmaking that, obviously, are divorced from the prior revocation decision. Environmental and other management concerns and public participation are taken into account in relation to the post-revocation decision-making.

21. As noted in paragraph 19, the opening of public lands following the revocation of a withdrawal may also lead to the locating of mining claims under the Mining Law of 1872. The right to go upon the opened lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident to mining operations carries with it the requirement to undertake adequate and responsible measures to prevent unnecessary or undue degradation of the federal lands and to provide for reasonable reclamation of those lands. 43 C.F.R. Subpart 3809. Similar regulations apply to national forest reservation lands.

22. Mining operators on project areas causing a cumulative surface disturbance in excess of five acres dur-

ing any calendar year must file a plan of operations with the Bureau of Land Management for its approval. The purpose of the plan is to prevent unnecessary or undue degradation and provide for reasonable reclamation. An EA is prepared by the Bureau to identify the impacts of the proposed operations and to determine whether an EIS is required. The EA also is used to determine the adequacy of mitigating measures and reclamation procedures included in the plan to ensure the prevention of unnecessary degradation of the land. Operations are required to be conducted to prevent unnecessary or undue degradation of the lands and to comply with all pertinent federal and state laws including but not limited to air quality, water quality, solid waste treatment requirements, and the prevention of adverse impacts to threatened or endangered species and their habitat. The regulations also provide that operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological sites, structure, building or object on the federal lands. An opportunity is afforded for investigation and salvage of cultural and paleontology values discovered after a plan of operation has been approved or where a plan is not involved.

23. Failure of the operator to either file a plan of operations or to fulfill its terms and conditions subjects the operator to being served with a Notice of Non-compliance and a possible court injunction. 43 C.F.R. 3809.3-2.

24. Operators on project areas causing a cumulative surface disturbance on five acres or less during any calendar year are required to file a Notice. The notice must identify the lands in question, describe the access routes, and steps to be taken to prevent unnecessary or undue degradation of the lands and reclamation of same. The regulations set forth detailed standards relating to environmental protection. 43 C.F.R. 3809.1-3. Operators

are also subject to the noncompliance procedures contained in 43 C.F.R. 3809.3-2.

**STATISTICAL SUMMARY OF SECTION 204(a)
WITHDRAWAL REVOCATION**

25. Since the passage of FLPMA, 671 public land orders, revoking withdrawals covering 19,957,607 acres of public lands have been issued by Interior. Some of the revoked withdrawals overlapped other withdrawals that remain in effect, hence, the net acreage affected was 17,303,371 acres. The revocation orders were the result of: (1) the disposition of pre-FLPMA withdrawal relinquishment and revocation requests pending at the time FLPMA was enacted; (2) record clearing actions as to lands no longer in government ownership but noted on the official status record as still being withdrawn from disposal under one or more of the public land laws; (3) revocations of withdrawals specifically excluded from review under FLPMA § 204(f); and (4) revocations (not including those mentioned in (1) above) that were made pursuant to the "ordinary course of business" rule, as articulated in the 1980 legal opinion of the Department's counsel.

The aforementioned figures are broken down by states as follows:

<i>State</i>	<i>PLO's</i>	<i>Acres Withdrawals Revoked</i>
Alaska	7	5,748,365
Arizona	36	2,313,868
California	102	563,524
Colorado	39	1,213,882
Idaho	55	382,356
Montana	69	1,587,631
Nevada	28	1,028,795
New Mexico	33	379,070
Oregon	160	303,733
Utah	51	5,423,806
Washington	39	740,904
Wyoming	40	244,648
Eastern States Office	<u>12</u>	<u>27,025</u>
	671	19,957,607

26. Of the 19,957,607 acres on which withdrawals have been revoked, 15,407,495 acres were opened to the operation of one or more of the public land laws. A state-by-state breakdown, showing the various categories to which the lands were opened, is shown on the following chart.

State	Acres Open to Surface Entry Only	Acres Open to Mining Only	Acres Open to Mineral Leasing Only	Acres Open to Mining Mineral Leasing and Surface Entry Only	Acres Open to Surface Entry and Mining Only	Acres Open to Mining Mineral Leasing Only	Acres Open to Surface Entry Mineral Leasing Only
Alas.	0	0	0	5,696,508	0	0	0
Ariz.	217,624	0	13,370	34,826	256,928	0	142,209
Cal.	154,577	19,655	35	1,667	144,355	885	0
Col.	27,463	258,040	0	508,640	111,733	0	0
Id.	101,303	260,487	24	1,567	16,567	0	0
Mon.	18,951	2,617	1,537,320	155	8,656	0	0
Nev.	344,762	0	640	152	240,032	0	640
N.M.	83,588	0	0	1,720	283,835	0	0
Ore.	67,026	15,565	0	393	26,325	0	0
Ut.	289,721	8,226	1,286	648	4,072,230	0	0
Wash.	5,599	143,468	1.0	0	151,923	0	0
Wyo.	11,244	55,083	0	3,720	38,796	0	0
ESO	0	0	10	757	0	0	24,095
TOTAL	1,321,858	763,141	1,552,686*	6,250,601	5,351,380	885	166,944

* Includes 1,537,320 acres in the Bob Marshall Wilderness Area that on January 1, 1984, was closed to mineral leasing by the Wilderness Act of 1964.

27. In addition to the total set forth in paragraph 26 (15,407,495 acres) withdrawals were revoked on an additional 4,550,112 acres that did not result in the lands remaining open to the operation of the public land laws. The reasons are:

	<i>Acreage</i>
Land selected by States for transfer to State ownership	267,748
Overlapping Withdrawals Kept the Lands Closed	2,654,236
Lands Transferred from Federal Ownership (vast majority transferred prior to revocation)	1,119,640
Record Clearing Only (Lands transferred from Federal ownership prior to the revocation and noted in PLO as "record clearing")	212,205
Other (In aid of legislation; to facilitate resurveys; disposal of excess property; to facilitate inventories of land mineral values)	296,283
TOTAL	4,550,112

28. Withdrawals effecting 15,407,495 acres (the total in paragraph 26) have been revoked since 1976 which have returned the public lands to the operation of the public land laws and an addition 4,450,112 acres (paragraph 27) which did not. Revocations thus covered a total of 19,957,607 acres.

29. Of the 15,407,495 acres that were formally withdrawn and are now open, 12,366,007 acres are open to the operation of the mining law. The following statistical

breakdown, by state, shows the acres opened, the number of mining claims filed with the Bureau, the number of claims on which Notices have been filed (disturbance by mining activities on 5 acres or less), the number of plans of operations filed (disturbance of more than 5 acres), and the number of mineral patents issued (transference of fee title to the mining claimant). Some lands on which withdrawals were revoked opened the lands to all forms of mining; other lands were already opened to some form of mining (metalliferous) and the withdrawal revocation only opened the land to nonmetalliferous mining.:

I. Lands opened to only non-metalliferous mining (already opened to metalliferous mining)	II. Lands opened to all forms of mining
---	---

Key:

Acres Opened (A)
Claims Filed (B)
Notices Filed (C)
Plans Filed (D)
Mineral Patents (E)

<u>State</u>	<u>Totals</u>		
<i>Alaska</i>			
(A)	0	5,696,508	5,696,508
(B)	0	4	4
(C)	0	0	0
(D)	0	0	0
(E)	0	0	0
<i>Arizona</i>			
(A)	190,997	100,757	291,754
(B)	672	1,088	1,760
(C)	1	9	10
(D)	0	4	4
(E)	0	0	0

California

(A)	33,472	132,610	167,424
(B)	10	822	832
(C)	2	3	5
(D)	0	13	13
(E)	0	0	0

Colorado

(A)	258,640	619,813	878,453
(B)	0	865	865
(C)	0	1	1
(D)	0	0	0
(E)	0	0	0

Idaho

(A)	263,296	15,325	278,831
(B)	11	2	13
(C)	0	0	0
(D)	2	0	2
(E)	0	0	0

Montana

(A)	7,600	3,828	11,428
(B)	0	11	11
(C)	0	0	0
(D)	0	0	0
(E)	0	0	0

Nevada

(A)	141,525	98,659	240,184
(B)	726	134	860
(C)	4	3	7
(D)	0	0	0
(E)	0	0	0

New Mexico

(A)	225,527	60,028	285,555
(B)	688	0	688
(C)	1	0	1
(D)	6	0	6
(E)	0	0	0

*Oregon**Washington*

(A)	151,314	186,359	337,673
(B)	5	34	39
(C)	0	14	14
(D)	0	0	0
(E)	0	0	0

Utah

(A)	3,990,059	91,334	4,081,393
(B)	301	195	496
(C)	1	0	1
(D)	0	0	0
(E)	0	0	0

Wyoming

(A)	68,656	28,943	97,599
(B)	76	0	76
(C)	2	0	2
(D)	0	0	0
(E)	0	0	0

Eastern States

(A)	0	757	757
(B)	0	0	0
(C)	0	0	0
(D)	0	0	0
(E)	0	0	0

Totals:

(A)	5,331,086	7,034,921	12,366,007
(B)	2,489	3,155	5,644
(C)	11	30	41
(D)	8	17	25
(E)	0	0	0

30. Of the 2,489 claims filed (and the resultant 11 Notices and 8 Plans of Operations) on lands opened only to non-metalliferous mining as a result of the withdrawal revocation, it cannot be determined how many relate only to non-metalliferous claims. The Bureau's mining claim recordation system does not distinguish between non-metalliferous and metalliferous claims. Thus, the actual number of claims, notices, and plans of operations filed on lands opened following the revocations in issue is less than shown in the chart in paragraph 29. We would estimate that approximately 70 to 80 percent of the claims were filed for metalliferous minerals and, thus, were in no way affected by the revocations in issue in this litigation.

31. An analysis of these figures shows that lands opened for the first time to all forms of mining total 7,034,921 acres, or approximately 3% of the total public lands.

32. With regard to the mining claims set forth in paragraph 29, the majority were located in 1983. A bureau-wide and state-by-state breakdown on the mining claims is attached as Exhibit 11. The acreage figures in Exhibit 13 do not necessarily coincide with the acreage figures given in paragraph 29 because the figures in paragraph 29 relate to the total acres opened to the mining laws while the acreage figures in Exhibit 11 relate to the acreage in the public land orders (PLO) opened to the mining laws and only on some of which were claims filed. For example, in Nevada, paragraph 29 shows that 98,659 acres

were opened to all mining with 134 resultant mining claims. Exhibit 11 shows that the 134 mining claims relate only to two PLOs that opened 15,346 acres to all forms of mining. Because of overlapping claims, it is not possible to determine the net acreage impacted by the 134 mining claims; however, Bureau experience shows the average claim is approximately 20 acres. Thus, in this example (land opened to all forms of mining in Nevada), while 98,659 acres were opened, only approximately 2,680 acres were affected by claims. Further, Exhibit 11 shows that for the last three months for which figures are available, only 45 claims have been filed: March 1985—15 claims filed; April 1985—29 claims filed; May 1985—1 claim filed.

33. In summary, the acres affected by or opened to the mining law area as follows:

Acres opened to all or some form of mining	12,366,007
Total mining claims filed	5,644
Actual acreage affected (each claim covering an average of 20 acres; overlapped acreage not calculated)	112,880
41 Notices filed on 5 acres or less (assuming maximum acres possible)	205
25 Plans of Operations (averaging 20 acres)	500

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 18th day of August, 1985

/s/ FRANK A. EDWARDS

Frank Edwards
Assistant Director, Land Resources
Bureau of Land Management

Exhibits to the I A Edwards Affidavit

STATE: Bureau - I - 204(a) - Open to Nonmetalliferous Mineral Entry only

Action Number	Area opened	Claims located after opening	Operating Under 43 CFR 3609 Notices	Plans	Date of opening order	Number of claims located by year				
						80	81	82	83	1985
AK	0	0	0	0						
AZ	190,957	672	1	0			6	386	99	168
CA	2,538	10	2	0				1	2	7
CO	0	0	0	0						
ES	0	0	0	0						
ID	262,687	11	0	2			9		1	1
MT	0	0	0	0						
NV	140,307	726	4	0				236	320	21
NM	223,581	688	1	6					51	439
OR	1,603	5	0	0					5	
UT	3,988,545	301	1	0			57	39	210	5
WY	18,044	76	2	0					19	
Total	4,828,262	2,489	11	8			72	662	707	641
								287	81	3
									20	16

Claims are located for all forms of commodities under the mining laws.

Claims are located for all forms of commodities under the mining laws.

Action Number	Area opened	Claims located after opening	Operating Under 43 CFR 3609 Notices	Plans	Date of opening order	Number of claims located by year				
						80	81	82	83	1985
AK	0	0	0	0						
AZ	190,957	672	1	0						
CA	2,538	10	2	0						
CO	0	0	0	0						
ES	0	0	0	0						
ID	262,687	11	0	2						
MT	0	0	0	0						
NV	140,307	726	4	0						
NM	223,581	688	1	6						
OR	1,603	5	0	0						
UT	3,988,545	301	1	0						
WY	18,044	76	2	0						
Total	4,828,262	2,489	11	8						

STATE: Bureau - I - 204(a) - Open to All Mineral Entry

Action Number	Area opened	Claims located after opening	Operating Under 43 CFR 3609 Notices	Plans	Date of opening order	Number of claims located by year				
						80	81	82	83	1985
AK	0	0	0	0						
AZ	190,957	672	1	0						
CA	2,538	10	2	0						
CO	0	0	0	0						
ES	0	0	0	0						
ID	262,687	11	0	2						
MT	0	0	0	0						
NV	140,307	726	4	0						
NM	223,581	688	1	6						
OR	1,603	5	0	0						
UT	3,988,545	301	1	0						
WY	18,044	76	2	0						
Total	4,828,262	2,489	11	8						

STATE: Alaska - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetalliferous Mineral Entry, (already open to metalliferous mineral entry).

II. Opened to All Mineral Entry.

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Date of opening order	Number of claims located by year				
					1985	1	2	3	4

I None

II 6477 5,696,508 4 0 0 11/9/83 3 1

Claims are located for all forms of commodities under the mining laws.

STATE: Arizona - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetalliferous Mineral Entry, (already open to metalliferous mineral entry)
 II. Opened to All Mineral Entry.

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Plans	Date of opening order	Number of claims located by year											
						80	81	82	83	84	1	2	3	4	5		
I	6156 5976 6281	1,300 189,657	3 669	0 1	0 0	3 16 82 8 05 81 6 16 82	1 6	384	976	168							
II	5689 5868 6442 6353	4,399 32,246 21,952 17,359	222 449 1 416	1 1 0 7	0 0 0 3	1 16 80 6 20 81 8 23 83 3 3 83	222 418 16 307	9 106 106									

Claims are located for all forms of commodities under the mining laws.

STATE: California - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetallic Mineral Entry, (already open to metallic mineral entry).
 II. Opened to All Mineral Entry.

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Plans	Date of opening order	Number of claims located by year										
						80	81	82	83	84	1	2	3	4	5	
I.																
5941	2,113	3	0	0	06-23-81							3				
5050	25	4	0	0	08-02-82							4				
R 2590	280	1	0	0	07-27-82						1					
R 2591	40	1	0	0	03-25-82			1								
6042	80	1	2	0	11-06-81				1							
6402	1,251	72	0	0	07-23-83					68		4				
5895	120	4	0	0	06-23-83					4						
5791	74,553	512	0	13	01-23-81					72		76				
2355	38,035	128	0	0	04-21-81		358	6		25		93				
5934	77	14	3	0	06-23-81		4			8		2				
5644	38	2	0	0	08-11-78					2						
5633	40	6	0	0	05-04-78	6										
5935	1,028	1	0	0	06-23-81					1						
R 27	9,002	4	0	0	05-31-77							4				
R 2565	1,742	1	0	0	04-21-81											
6490	2,932	38	0	0	12-02-83					1						
5932	7,421	17	0	0	06-23-81		10	1		12		10	4	4		
54928	440	1	0	0	10-30-79					1		2				
6393	40	2	0	0	07-22-83											
6336	39	17	0	0	10-07-82							11				
6446	225	1	0	0	08-23-83					1		6				
5930	3,814	1	0	0	06-23-81		1									
II.																
5867	21,993	607	0	0	05-15-81											
6103	5,745	72	0	0	01-28-82											
6168	820	6	0	0	02-08-82											
6170	29,972	25	0	0	02-10-82											
6194	40	2	0	0	03-02-82											
6235	1,343	5	0	0	04-12-82											
6387	508,640	148	1	0	05-16-83											
6403	1,000	1	0	0	06-15-83											
6404	1,000	1	0	0	06-15-83											
6405	1,000	1	0	0	06-15-83											
6406	1,000	1	0	0	06-15-83											
6407	1,000	1	0	0	06-15-83											
6408	1,000	1	0	0	06-15-83											
6409	1,000	1	0	0	06-15-83											
6410	1,000	1	0	0	06-15-83											
6411	1,000	1	0	0	06-15-83											
6412	1,000	1	0	0	06-15-83											
6413	1,000	1	0	0	06-15-83											
6414	1,000	1	0	0	06-15-83											
6415	1,000	1	0	0	06-15-83											
6416	1,000	1	0	0	06-15-83											
6417	1,000	1	0	0	06-15-83											
6418	1,000	1	0	0	06-15-83											
6419	1,000	1	0	0	06-15-83											
6420	1,000	1	0	0	06-15-83											
6421	1,000	1	0	0	06-15-83											
6422	1,000	1	0	0	06-15-83											
6423	1,000	1	0	0	06-15-83											
6424	1,000	1	0	0	06-15-83											
6425	1,000	1	0	0	06-15-83											
6426	1,000	1	0	0	06-15-83											
6427	1,000	1	0	0	06-15-83											
6428	1,000	1	0	0	06-15-83											
6429	1,000	1	0	0	06-15-83											
6430	1,000	1	0	0	06-15-83											
6431	1,000	1	0	0	06-15-83											
6432	1,000	1	0	0	06-15-83											
6433	1,000	1	0	0	06-15-83											
6434	1,000	1	0	0	06-15-83											
6435	1,000	1	0	0	06-15-83											
6436	1,000	1	0	0	06-15-83											
6437	1,000	1	0	0	06-15-83											
6438	1,000	1	0	0	06-15-83											
6439	1,000	1	0	0	06-15-83											
6440	1,000	1	0	0	06-15-83											
6441	1,000	1	0	0	06-15-83											
6442	1,000	1	0	0	06-15-83											
6443	1,000	1	0	0	06-15-83											
6444	1,000	1	0	0	06-15-83											
6445	1,000	1	0	0	06-15-83											
6446	1,000	1	0	0	06-15-83											
6447	1,000	1	0	0	06-15-83											
6448	1,000	1	0	0	06-15-83											
6449	1,000	1	0	0	06-15-83											
6450	1,000	1	0	0	06-15-83											
6451	1,000	1	0	0	06-15-83											
6452	1,000	1	0	0	06-15-83											
6453	1,000	1	0	0	06-15-83											
6454	1,000	1	0	0	06-15-83											
6455	1,000	1	0	0	06-15-83											
6456	1,000	1	0	0	06-15-83											
6457	1,000	1	0	0	06-15-83											
6458	1,000	1	0	0	06-15-83											
6459	1,000	1	0	0	06-15-83											
6460	1,000	1	0	0	06-15-83											
6461	1,000	1	0	0	06-15-83											
6462	1,000	1	0	0	06-15-83											
6463	1,000	1	0	0	06-15-83											
6464	1,000	1	0	0	06-15-83											
6465	1,000	1	0	0	06-15-83											
6466	1,000	1	0	0	06-15-83											
6467	1,000	1	0	0	06-15-83											
6468	1,000	1	0	0	06-15-83											
6469	1,000	1	0	0	06-15-83											
6470	1,000	1	0	0	06-15-83											
6471	1,000	1	0	0	06-15-83											
6472	1,000	1	0	0	06-15-83											
6473	1,000	1	0	0	06-15-83											
6474	1,000	1	0	0	06-15-83											
6475	1,000	1	0	0	06-15-83											
6476	1,000	1	0	0	06-15-83											
6477	1,000	1	0	0	06-15-83											
6478	1,000	1	0	0	06-15-83											
6479	1,000	1	0	0	06-15-83											
6480	1,000	1	0	0	06-15-83											
6481	1,000	1	0	0	06-15-83											
6482	1,000	1	0	0	06-15-83											
6483	1,000	1	0	0	06-15-83											
6484	1,000	1	0	0	06-15-83											
6485	1,000	1	0	0	06-15-83											
6486	1,000	1	0	0	06-15-83											
6487	1,000	1	0	0	06-15-83											
6488	1,000	1	0	0	06-15-83											
6489	1,000	1	0	0	06-15-83											
6490	1,000	1	0	0	06-15-83											
6491	1,000	1	0	0	06-15-83											
6492	1,000	1	0	0	06-15-83											
6493	1,000	1	0	0	06-15-83											
6494	1,000	1	0	0	06-15-83											
6495	1,000	1	0	0	06-15-83											
6496	1,000	1	0	0	06-15-83											

Claims are located for all forms of commodities under the mining laws.

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STATE: Colorado - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetallic Mineral Entry, (already open to metallic mineral entry).
 II. Opened to All Mineral Entry.

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Under Plans	Date of opening order	Number of claims located by year									
						80	81	82	83	84	1	2	3	4	
I.															
None															
5867	21,993	607	0	0	05-15-81		936	70					1		
6103	5,745	72	0	0	01-28-82			72							
6168	820	6	0	0	02-08-82										
6170	29,972	25	0	0	02-10-82										
6194	40	2	0	0	03-02-82			2					4		
6235	1,343	5	0	0	04-12-82			1							
6387	508,640	148	1	0	05-16-83									5	
														148	

Claims are located for all forms of commodities under the mining laws.

STATE: Idaho - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetallic Mineral Entry, (already open to metallic mineral entry).
 II. Opened to All Mineral Entry.

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3009 Notices	Date of opening order	Number of claims located by year				
					1980	81	82	83	84
I.	5680	262,687	11	10-05-79	9	1	1	1	1
II.	6150	2,042	2	02-08-82	2	0	0	0	0

Claims are located for all forms of commodities under the mining laws.

Claims are located for all forms of commodities under the mining laws.

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3009 Notices	Plans	Date of opening order	Number of claims located by year				
						80	81	82	83	84
I.	None									
II.	5836	40	2	0	02-20-81	2				
	5986	4	2	0	10-07-81					
	6191	145	7	0	04-07-82					

STATE: Montana - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetallic Mineral Entry, (already open to metallic mineral entry).
 II. Opened to All Mineral Entry.

STATE: Nevada - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetallic Mineral Entry, (already open to metallic mineral entry).
 II. Opened to All Mineral Entry.

	Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3009 Notices	Date of opening order	Number of claims located by year									
						80	81	82	83	84	1	2	3	4	5
I.	6135	80	3	0	02-05-82			3							
	6108	39,310	121	0	01-28-82				121						
	6081	84,142	998	4	11-02-81			229	199	21	149				
	5976	16,775	4	0	06-30-81			4							
II.	5980	130	19	0	05-18-81		9	2	8						
	5664	15,216	115	3	06-07-79	27	18	50		24					

Claims are located for all forms of commodities under the mining laws.

STATE: New Mexico - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetallic Mineral Entry, (already open to metallic mineral entry).
 II. Opened to All Mineral Entry.

	Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3009 Notices	Plans	Date of opening order	Number of claims located by year									
							80	81	82	83	84	0	2	0	4	5
I.	6459	223,581	688	1	6	10-07-83					51	419	138	14	1	20
II.	None															

Claims are located for all forms of commodities under the mining laws.

11. *Opened to All Mineral Entry.*

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Plans	Date of opening order	Number of claims located by year											
						80	81	82	83	84	1	2	3	4	5		
I.																	
6313	3,988,505	300	1	0	09-05-82			39	209	5	47						
6274	40	1	0	0	07-21-82				1								
II.																	
6149	39,916	17	0	0	03-16-82			10	3	4							
5850	8,360	101	0	0	01-23-81												
6023	1,278	59	0	0	10-29-81		12	32	33	3	9			12			
6032	227	18	0	0	01-06-81		18			40	19						

Claims are located for all forms of commodities under the mining laws.

Claims are located for all forms of commodities under the mining laws.

II. Opened to All Mineral Entry.

[illegible]

STATE: Wyoming - Land Opened under 204(a) of FLPMA
 I. Opened only to Nonmetalliferous Mineral Entry, (already open to metalliferous mineral entry).

II. Opened to All Mineral Entry.

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Date of opening order	Number of claims located by year					
					80	81	82	83	84	1985
I.	5995 6220	2,367 15,677	75 1	2 0	0 0	09-04-81 03-12-82	57	18 1		
II.	None									

Claims are located for all forms of commodities under the mining laws.

UNITED STATES DISTRICT COURT
 FOR THE
 DISTRICT OF COLUMBIA

Civil No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, DONALD P. HODEL, AND THE UNITED
 STATES DEPARTMENT OF THE INTERIOR, DEFENDANT

AFFIDAVIT 1B OF FRANK EDWARDS

1. I, Frank Edwards, hereby declare under penalty of perjury that: I am the Assistant Director, Land Resources, of the Bureau of Land Management, U.S. Department of the Interior and have held that position since October 1982. I have been employed by the Bureau for about 29 years. I am acquainted with the facts in this case and swear and affirm that the information contained in this affidavit is true and accurate to the best of my knowledge.

2. In this affidavit I will discuss the FLPMA section 204(f) withdrawals review process in relation to federal land withdrawals.

3. To "withdraw" the public lands means to remove specific public lands from the operation or effect of one or more of the public land laws and/or to reserve them for a specific purpose. During the past century, numerous withdrawals were issued. Whether to continue, modify, or terminate these withdrawals was an unanswered question that eventually led to the enactment of section 204(f) of FLPMA.

4. By the end of 1958, review of withdrawals had been established as a matter of Interior policy. Part 603 of the Departmental Manual at 603.1.4 provided: "The Bureau of Land Management in cooperation with other agencies as well as interested bureaus of the Department, is responsible for the development of long-range plans and procedures for complete inventory of all current withdrawals and for systematic periodic review of such withdrawals." (Exhibit No. 1).

5. Procedures implementing Departmental Manual section 603.1.4 were promulgated shortly thereafter in BLM Manual, Volume V, Chapter 4.23, 7/18/62. The following steps were established for systematic review of withdrawals:

- a. identification of individual withdrawals and reservations, their recordation for control purposes, and creation of individual case files containing all available office information;
- b. assessment of withdrawals or reservations utilizing program development information secured from office records, land use analyses, holding agencies, and field examinations;
- c. review and comment by the holding agency preceded by discussions when necessary to facilitate review;
- d. completion of progress reports and action programs;
- e. cycling the review on a continuing basis as needed;
- f. continue processing of requests for revocations in accord with existing procedures; and
- g. implementation by state directors of mechanics for conducting withdrawal review. (Exhibit No. 2).

6. During the twenty years which preceded the enactment of Section 204(f) of FLPMA, the Department's

withdrawal review was only partially successful, although some progress had been made during the period beginning in 1956 up until 1961. (Exhibit No. 3).

7. On September 19, 1964, Congress established the Public Land Law Review Commission (Commission) for the purpose of studying existing laws and procedures relating to the administration of the public lands of the United States.

8. In 1970, the Commission recommended that Congress establish a statutory program by which existing withdrawals could be periodically reviewed with the objective of continuing, modifying, and/or revoking withdrawals. The Commission's recommendation was extremely important: (a) it would elevate the Bureau's withdrawal review to the level of legislation empowering the Department to implement a systematic review and (b) it gave Interior authority over outside holding agencies, who in the past, had tended not to cooperate with the Department fully in fulfilling the objectives of withdrawal review. (Exhibit No. 4).

9. The 204(f) withdrawal review of FLPMA evolved from the Commission's recommendation and was first set forth in section 404 of H.R. 13777, 94th Cong., 2d Sess., the House-passed version of FLPMA. Originally, two proposals were suggested by the framers of FLPMA to establish a withdrawal review process. The first proposal called for the creation of an independent withdrawal review commission. The second proposal was somewhat shorter, and, with a few modifications incorporated during the conference process, became section 204(f) of FLPMA.

IMPLEMENTATION OF FLPMA SECTION 204(f)

10. Procedures implementing section 204(f) began to be developed in 1977 when other agencies were notified about the existence of the program and their cooperation sought. Letters were sent to the Department of the Army, Department of the Navy, Department of the Air Force, the

U.S. Corps of Engineers, Department of Agriculture and the Department of Transportation. (Exhibit No. 5).

11. In September of 1977, Organic Act Directive (OAD) No. 77-69 (Exhibit No. 6), which outlined the procedures for conducting an inventory of withdrawals, was issued for comment. Section .06 of that Directive provided for the "comprehensive, detailed, orderly review" of withdrawn land which had been designated for review under section 204(f) of FLPMA. The inventory requirements included a review of master title plats (MTPs), General Services Administration real property reports, Forest Service land records, and holding agency records to determine which withdrawals would be reviewed. Section .11 describes the procedures for conducting the inventory review.

12. In January of 1978, draft regulations implementing the 204(f) process were prepared and forwarded by the Lands Division of the Bureau to the Bureau Organic Act Policy Committee for review. The draft regulations were designed to implement the stated congressional policy objectives contained in section 102 of FLPMA and to "define and describe the review and evaluation directive contained in section 204(f)." (Exhibit No. 7).

13. In February of 1978, comments were received from the Division of Legislative and Regulatory Management of the Bureau (Exhibit No. 8) recommending that regulations not be promulgated to implement section 204(f).

14. By March of 1978, OAD No. 77-69 (Par. No. 10 above) had been revised by OAD No. 78-13. (Exhibit No. 9). The revisions were minor and included: a modification of the step 4 inventory review process to give the Director of the Bureau authority to resolve disputes regarding whether a particular withdrawal should be subject to review.

15. OAD No. 79-28 (Exhibit No. 10) was issued in April of 1979. It discussed the establishment of withdrawal review priorities as well as a three-stage or phase process for conducting withdrawal reviews. Under OAD No. 79-28, priority was to be given to inventorying and reviewing all withdrawals specified in Section 204(f).

16. OAD No. 79-28 also described in detail three phases of withdrawal review:

(a) Inventory. The first phase includes the identification of withdrawals and a determination of whether the withdrawal is subject to review under section 603 of the Departmental Manual or section 204(f) of FLPMA. OAD No. 79-28 also detailed nine steps for conducting the inventory. (Exhibit No. 10 at Encl. 1-13 to 1-16).

(b) Verification/Reconciliation. This second phase provides for the notification to the field offices of the various holding agencies of the withdrawal review process and providing such agencies with inventory data. (Exhibit No. 10 at Encl. 1-17).

(c) Rejustification and Review. This third phase consists of developing schedules for review, rejustification for continuation or extending withdrawals, coordinating the review with holding agencies and preparing recommendations. The entire process is comprised of 20 steps beginning with a prejustification review by the Bureau District Office and culminating with the cases being transmitted to the Secretary's Office in Washington for review and recommendation (Exhibit No. 10. Encl. 1-24 to 1-29).

17. In April of 1979, the need for regulations implementing the 204(f) withdrawal review was again discussed. (Exhibit No. 11). The decision to issue regulations was debated at the staff level until June of 1979. At

that time, a second decision was made not to issue regulations by the Deputy Director for Lands and Resources.

18. In October of 1979, OAD No. 79-28, Change 1, was promulgated (Exhibit 12) to streamline supporting documentation requirements, e.g., OAD No. 79-28 required a mineral report to be submitted by holding agencies during the rejustification phase (See Exhibit No. 10 at Encl. 1-33). OAD No. 79-28, Change 1, still required the submission of a mineral report by holding agencies, however, if a United States Geological Survey report was available, it could be substituted in lieu thereof.

19. By January of 1980, the inventory of withdrawals was completed and a summary report prepared. (Exhibit No. 13). The report stated that an initial determination indicated that 67.9 million acres of withdrawn lands would be subject to review under section 204(f). Of the 67.9 million acres, 54.2 million were segregated from mineral location under the 1872 Mining Law and 18.9 million acres were segregated from mineral leasing under the 1920 Mineral Leasing Act. Many of these acres overlapped. The total number of withdrawals was 7,911.

20. The inventory report was transmitted to Congress on January 16, 1980, informing the respective Chairmen of the House Committee on Interior and Insular Affairs and Senate Committee on Energy and Natural Resources of the completion of the inventory. (Exhibit No. 14).

21. Withdrawal review procedures were often updated and revised (Exhibit Nos. 15, and 16), *inter alia*, streamlining the review procedures and providing details on how case files were to be transmitted from State offices to the Secretary and thereafter to the President and eventually to Congress.

22. In October of 1980, the Office of the Solicitor clarified the distinction between section 204(a) revocations and section 204(f) terminations. (Exhibit No. 17). The

opinion traced the legislative history of both sections and concluded that individual proposed revocations of withdrawals by holding agencies which arise during the "ordinary course of business" could be processed under the Secretary's revocation authority under section 204(a) of FLPMA rather than the self-contained termination provisions of 204(f).

23. In December of 1980, a revised report containing updated inventory data was transmitted to the appropriate Chairmen of the House and Senate Committees with oversight responsibility for withdrawal review (Exhibit No. 18). The new report refined the initial data to indicate 6,123 withdrawals comprising 51.9 million acres of land were subject to review under section 204(f).

24. In March of 1981, OAD 81-4 (Exhibit No. 19) was promulgated establishing withdrawal review priorities and target dates: (1) fiscal year (FY) 1981—complete field processing of all pre-FLPMA and other Federal holding agency withdrawal relinquishments (217 cases totaling 2.5 million acres) and commence systematic review of Bureau withdrawals which have high mineral potential; (2) FY 1982—complete field review and processing for all Bureau withdrawals, (1,317 withdrawals totaling 24 million acres); (3) FY 1983—implement 9-year schedule for review of other agency withdrawals. In order to meet the 1991 deadline mandated by FLPMA, the directive anticipated that 500-600 withdrawals had to be reviewed each year. To carry out this responsibility, additional funding (approximately 2.1 million dollars) was allocated and 56 new staff persons were hired to work in field offices throughout the country on withdrawal review.

25. OAD No. 81-10 was distributed to field offices in May of 1981 (Exhibit No. 20) and supplied guidance on: the use of categorical exclusions; the preparation of mineral and land reports; criteria for determining whether

a withdrawal should be revoked or continued; differentiating among types of withdrawals and their authorities for review; and the composition of revocation case files.

26. By May of 1982, Bureau procedures for withdrawal review were incorporated into and superseded by Bureau Manual, Section 2355 (Exhibit No. 21). Section 2355 of the manual incorporated OAD Nos. 79-28, Changes 1, 2, and 3, and OAD Nos. 81-4, 81-10, and 81-11. The basic criteria for reviewing withdrawals was modified by the manual. Reviewers were instructed to determine: 1) for what purpose were the lands withdrawn; 2) whether the purpose was still being served; and 3) whether the lands were suitable for return to the public domain (*e.g.*, not surplus property or contaminated).

27. In July of 1982, Federal holding agencies were contacted in an effort to encourage such agencies to complete schedules for withdrawal review before the end of the current fiscal year and to begin a systematic review of each withdrawal by early FY 1983 (Exhibit No. 22). Agencies were asked to compile a brief report regarding the status of the withdrawal review, detail problems and offer suggestions for improvement. If funding for conducting withdrawal review was a potential problem, the Department offered to assist the holding agencies to obtain additional funding.

28. In October of 1982, the General Accounting Office (GAO) released a report (Exhibit No. 23) which indicated that relatively little land was being opened to mineral entry despite the emphasis in section 204(f) of FLPMA on the review of withdrawals which closed the land to mining and mineral leasing. The report stated:

[B]y reviewing all BLM land first, including those lands already opened to mineral entry, many lands closed to mineral exploration and development and specified for review by the Congress have not yet been

reviewed. Congressional objectives could have been better met by now if BLM had allocated program resources proportionately to those States with the most withdrawn acreage needing review and the best potential for mineral development rather than on the basis [*sic*] numbers of withdrawal cases to be reviewed.

29. By January of 1983, the Office of the Solicitor began to review all withdrawal revocations and modifications to determine if actions taken by the Bureau were in conformance with the section 204(f) review requirements. (Exhibit No. 24). The Bureau was instructed to be prepared to justify all proposed revocations under the 204(a) "ordinary course of business" process by explaining in detail how the proposed action arose.

30. Instruction Memorandum (IM) No. 83-429 (Exhibit No. 25) issued in April of 1983, provided guidance on what constituted proper justification to continue a withdrawal which closed lands to mining and mineral leasing.

31. In May of 1983, procedures developed by the Bureau for transmitting 204(f) review packages to the President and Congress were approved by the Assistant Secretary. (Exhibit No. 26). In October 1983, I participated in a briefing the appropriate House and Senate Committees staffs and obtained agreement on these procedures.

32. In December of 1983, the initial package of 34 cases of 204(f) recommended withdrawal terminations were forwarded by the Bureau, through the Assistant Secretary, to the Secretary for review and recommendations. Nine more packages followed soon thereafter.

33. In March of 1984, the National Public Lands Advisory Council passed a resolution recommending that the Secretary of the Interior take the necessary action to assure that other agencies establish and maintain a firm

schedule to complete the withdrawal reviews prior to the 1991 deadline. (Exhibit 27.)

34. In May of 1984, staff from the Department's Office of Congressional and Legislative Affairs and I met with OMB to discuss and obtain agreement on the withdrawal review reports and procedures. No written record of this meeting was made.

35. In January of 1985, seven 204(f) packages were forwarded by the Secretary to the Office of Management and Budget (OMB) for review. Three other 204(f) packages were still being reviewed in the Office of the Secretary.

36. In June 1985 a note was sent to OMB from the Deputy Assistant Secretary, Land and Minerals Management, requesting that the seven 204(f) packages be returned to BLM. (Exhibit 28.)

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 18th day of August, 1985.

/s/ FRANK EDWARDS
Frank Edwards

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

Civil No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, DONALD P. HODEL, AND THE UNITED
STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS

AFFIDAVIT IC OF FRANK EDWARDS

1. I, Frank Edwards, hereby declare under penalty of perjury that I am the Assistant Director, Land Resources, Bureau of Land Management, U.S Department of the Interior, Washington, D.C., having served in that capacity since October, 1982. I have been employed by the Bureau of Land Management for about 29 years. Based upon my past employment with the Bureau and my current job responsibilities, I am familiar with the subject matter of this affidavit and the Bureau procedures and data relating to it. The information contained in this affidavit is true and accurate to the best of my knowledge, information and belief.

LAND CLASSIFICATIONS - BACKGROUND

2. Broad authority to classify public lands and to determine their suitability for disposal or retention for federal management was first granted to the Department of the Interior by the Taylor Grazing Act of 1934. When the statute was enacted, recognition was given for the first time to the need for conservation and management of size-

able portions of the remaining unappropriated public lands.

3. Subsequently, the President issued Executive Orders 6910 (1934) and 6964 (1935) which withdrew from disposition for general classification purposes virtually all of the remaining unappropriated public lands, including the grazing districts established by the Taylor Grazing Act. However, the President modified Executive Order No. 6910 to remove the grazing districts from its scope. (Executive Order No. 7274 (1936)).

4. In 1936, Congress amended section 7 of the Taylor Grazing Act to include the unappropriated public land areas in the contiguous States covered by the Executive Orders, as well as the grazing districts, and to broaden Interior's classification authority in keeping with the Executive Orders. As amended, section 7 provided that public lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry. Under the sweeping authority of Section 7, as amended, one could not dislodge the Government's title under the public land laws without first obtaining a favorable classification decision from Interior. Conversely, an unfavorable decision led to continued retention of the particular public land area involved in the classification request.

5. In 1964, Congress enacted the Classification and Multiple Use (C&MU) Act which called upon the Secretary of the Interior to review the public lands to determine which land shall be classified as suitable for disposal and which land should be retained in federal ownership. This act expired in 1970.

6. Simultaneously with the passage of the C&MU Act, Congress also established the Public Land Law Review Commission and declared that the public lands of the United States should be retained and managed or disposed

of in a manner to provide the maximum benefit for the general public. Thus, a new policy of balanced retention and disposal was introduced in relation to the management of the public lands.

7. In addition to the Taylor Grazing Act and the C&MU Act, other statutes were enacted pursuant to which Interior was required to take classification actions. The most notable of these statutes were the Public Land Sale Acts, the Small Tract Act of 1938, and the Recreation and Public Purposes Act. Only the latter statute survives today.

8. Interior, acting through the Bureau, had to review hundreds of millions of acres of public lands to make its determinations leading to classification for retention or disposal, before the C&MU Act expired in 1970 by its own terms. Bureau officials undertook immediately to develop procedures and published final rulemaking for classifications in October of 1965. Development of the regulations involved extensive public participation in which 65 public meetings were held throughout the Western States. With minor revisions in 1968 and 1970, the regulations remain essentially the same today as they were when issued in 1965.

9. As the regulations were being developed, Bureau of Land Management officials also sought to develop land use plans concurrently with the classification review. The land use planning system was underway by the time that most of the C&MU Act classifications had been ordered into effect.

10. According to a 1972 Bureau report, a total of 177,630,329 acres were classified under the C&MU Act. Lands classified for retention were typically segregated against agricultural entries and sale under the public sale acts. Less than two percent of the lands classified were segregated against mining. (Exhibit 1).

11. The fact that the Bureau was not wholly successful in making its classifications on the basis of planning recommendations was recognized by the Public Land Law Review Commission in its final report, *One-Third of the Nation's Land, A Report to the President and the Congress*, published in June of 1970. Recognizing "that BLM acted under a congressional mandate to make its classifications as soon as possible pursuant to an authority of temporary duration", the Commission said:

Despite the obvious need for careful planning, it is apparent that [the classifications] were made in a hurried manner on the basis of inadequate information.

It was found that, for various reasons of expediency, the Bureau concentrated on large scale retention with little land use planning on its part and virtually none on the part of local and state planning authorities (although coordination was effected with them). Thus, the classifications were not preceded by necessary comprehensive efforts to gather information pertinent to resource capabilities and future development probabilities or by systematic attempts to state alternative uses within the context of regional or state development goals.

Commission's report p. 53. (Exhibit 2)

12. However, as pointed out by the Commission, the classifications were not irrevocable, and they could be changed by the Bureau's new land use planning system as it became more refined. (Exhibit 2) This remedial approach is reflected in the provisions of section 202(d) of the Federal Land Policy and Management Act of 1976.

13. Moreover, in response to applications filed under 43 C.F.R. 2400, Bureau officials were free to examine tracts of land and determine whether the tracts were still

proper for retention in federal management or more suitable for use or disposal under appropriate statutory authority. Such determinations generally were made and were based on field reports and environmental studies prepared in accordance with the Bureau's manual requirements. Upon finding that particular public lands were suitable for disposal, the authorized officer would reclassify the lands for such purposes. In this manner, substantial acreages of public land eventually were transferred out of federal ownership under various disposal statutes, although initially they had been classified for retention under the C&MU Act.

LAND CLASSIFICATIONS UNDER FLPMA – SECTION 202(d)

14. Many of the recommendations contained in the 1970 report of the Public Land Law Review Commission were absorbed into the Federal Land Policy and Management Act (FLPMA), including the concept that the public lands should be retained in Federal ownership, unless as a result of the land use planning, it is determined that disposal will serve the national interest. Further, any classifications of public lands or any land use plan in effect when FLPMA was passed were to be reviewed in the land use planning process. Also, the Secretary was expressly authorized to modify or terminate any such classification consistent with such land use plans.

15. In 1979, the Bureau issued a first draft of what subsequently would become section 2355 of the Bureau's manual. This draft was distributed as an instruction memo in manual format (Exhibit 3) and provided that classifications may be reviewed under the existing planning process and the land use planning activity called for by § 202(a) of FLPMA. A second draft version of the Bureau's manual section 2355 was distributed in 1980. (Exhibit 4). This second version did not alter the first draft insofar as how

classifications were to be reviewed. It was on this basis that the vast majority of classifications were examined under Interior's post-FLPMA classification review.

16. In 1980 the Office of the Solicitor for the Department expressed the view that the FLPMA § 204(f) review was not intended to be applied to lands segregated as a result of C&MU Act retention classification decisions, and that Interior was to review C&MU classifications under the land use planning procedures of FLPMA. (Exhibit 5). Henceforth, all classifications were to be reviewed under the land use planning procedures of FLPMA §§ 202(a) and 202(d). OAD No. 78-49 Chg. 1, July 7, 1981 (Exhibit 6).

17. Initially, classification reviews covering over 1,400 classification notices, were to be completed before the end of FY 1992, as part of the Bureau of Land Management's planning process. OAD No. 81-4, dated March 2, 1981 (Exhibit 7). However, in June of 1981 classification review was accelerated. Four criteria were established, OAD No. 81-11, dated June 18, 1981 (Exhibit 8), for the termination of classifications having segregative effect:

a. The classification notice does not include any segregative language, e.g., it merely states "classified for retention".

b. The notice segregates against applications under laws which were repealed by FLPMA.

c. The classification notice segregates against discretionary land laws and a Management Framework Plan (MFP), Resource Management Plan (RMP), or special area plans such as the plan for the California Desert, is in place and provides an adequate basis for acting on applications which may be filed under those laws.

d. The classification notice segregates against the operation of the mining laws, but the Bureau of Land

Management has determined that the lands involved do not contain minerals of more than nominal value and there has been no serious interest expressed in mineral development. For lands containing minerals known or believed to be of more than nominal values other specially-referenced principles apply.

18. OAD 81-11 also provided that classifications not meeting the four criteria may be left intact pending the completion of the necessary management plans. Further, it states that when completed the plans "must provide the specificity needed to: (a) effect conformance determinations . . . and (b) obviate the necessity for continuing classifications made under elapsed statutes." (Emphasis in the original.) (Exhibit 8)

19. The 1972 report (Exhibit 1) identified over 177 million acres as having been classified. Of this total, the BLM has reviewed 167,781,998 acres since 1976. Of this latter figure, classifications have been terminated on 160,833,438 acres. These figures are broken down by states as follows:

<i>State</i>	<i>Classification Acres Reviewed</i>	<i>Classification Acres Terminated</i>
Alaska	32,625,000	32,625,000
Arizona	10,532,848	10,532,848
California	2,609,054	2,460,636
Colorado	6,618,096	6,611,620
Idaho	5,210,046	5,206,406
Montana	5,201,297	5,197,520
Nevada	39,882,870	39,670,798
New Mexico	8,974,939	8,900,622
Oregon	13,444,337	9,549,621
Utah	29,938,546	27,343,457
Washington	25,809	23,986
Wyoming	12,719,156 [sic]	23,710,924
Eastern States	0	0
TOTALS	167,781,998	160,833,438

20. Of the 160.8 million acres on which classifications have been terminated, 819,876 acres have been opened to the operation of the mining laws and 96,030 acres had been opened to the operation of the mineral leasing laws. On a state-by-state basis, this break down is as follows:

<i>State</i>	<i>Acres Open to Mining Location</i>	<i>Acres Open to Mineral Leasing</i>
Alaska	0	0
Arizona	109,095	36,946
California	73,810	0
Colorado	20,501	0
Idaho	17,535	0
Montana	16,097	0
Nevada	141,888	213
New Mexico	32,131	53,673
Oregon	138,507	5,198
Utah	176,685	0
Washington	3,743	357
Wyoming	89,884	4,300
Eastern States	0	0
TOTALS	819,876	96,030

21. With regard to lands that have been opened to the operation of the mining laws, following is a state-by-state breakdown, showing acres opened to the mining laws, the mining claims located, the number of notices filed (mining activities disturbing 5 acres or less), plans of operations (disturbing more than 5 acres) and mineral patents issued.

**Lands Opened due to
Land Classification
202(d) Terminations
(for all mining)**

Key:

Acres Opened (A)

Claims Filed (B)

Notices Filed (C)

Plans Filed (D)

Mineral Patents (E)

<i>State</i>	<i>Totals</i>
Alaska	
(A)	0
(B)	0
(C)	0
(D)	0
(E)	0
Arizona	
(A)	109,095
(B)	69
(C)	1
(D)	0
(E)	0
California	
(A)	73,810
(B)	445
(C)	5
(D)	0
(E)	0
Colorado	
(A)	20,501
(B)	84
(C)	1
(D)	0
(E)	0

Idaho	
(A)	17,535
(B)	31
(C)	0
(D)	0
(E)	0
Montana	
(A)	16,097
(B)	1
(C)	0
(D)	0
(E)	0
Nevada	
(A)	141,888
(B)	149
(C)	9
(D)	1
(E)	0
New Mexico	
(A)	32,131
(B)	0
(C)	0
(D)	0
(E)	0
Oregon	
Washington	
(A)	142,250
(B)	34
(C)	4
(D)	0
(E)	0
Utah	
(A)	176,685
(B)	25
(C)	0
(D)	0
(E)	0

Wyoming	
(A)	89,884
(B)	406
(C)	3
(D)	1
(E)	0
Eastern States	
(A)	0
(B)	0
(C)	0
(D)	0
(E)	0
Totals	
(A)	819,876
(B)	1,244
(C)	23
(D)	2
(E)	0

22. Attached as Exhibit 9, is a further breakdown, state-by-state, of the timing relating to filing of mining claims from date of termination (through May 1985) and their locations. The acreage figures in Exhibit 9 do not necessarily coincide with the acreage figures given in paragraph 21 because the figures in paragraph 21 relate to the total acres opened to the mining laws while the acreage figures in Exhibit 9 relate only to the acreage in the classification notices that were opened and on some of which claims were filed. For example, in Idaho, paragraph 21 shows that 17,535 acres were opened to all forms of mining with 31 resultant mining claims. Exhibit 9 shows that the 31 mining claims relate only to two classification notices that opened 910 acres to all forms of mining. Because of overlapping claims, it is not possible to determine the net acreage impacted by the 31 mining claims; however, Bureau experience shows the average claim is ap-

proximately 20 acres. Thus, in this example, (lands opened to all forms of mining in Idaho) while 17,535 acres were opened, only approximately 620 acres were affected. Further, as can be seen, the total claims in Exhibit 9 located in 1985 have been few: January 1985—27 claims located; February 1985—12 claims located; March 1985—2 claims located; April 1985—8 claims located; and May 1985—0 claims located.

23. In summary, the total acres affected by or opened to the mining law are as follows:

Acres opened to all or some form of mining	819,876
Mining claims filed	1,244
Actual acreage affected (each claim covering an average of 20 acres; overlapping claims are not calculated)	24,880
23 Notices filed on 5 acres or less (assuming maximum)	115
2 Plans of Operations (average 20 acres)	40

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 18th day of August, 1981.

/s/ Frank A. Edwards
FRANK EDWARDS

Exhibits to the I C Edwards Affidavit

STATE: Bureau - 202545 - Open to all mineral entry

Action Number	Acres opened	Claims located after opening	Operating Under 43 CFR 1809 Notices	Plans	Date of opening order	Number of claims located by year									
						80	81	82	83	84	1	2	3	4	5
AK	0	0	0	0											
AZ	58,033	69	1	0				6	42	9	2	10	2	8	
CA	21,329	445	5	0			40	30	205	144	13	2			
CO	3,537	84	1	0					4	77	3				
ES	0	0	0	0											
ID	910	31	0	0		13	6		12	1					
MT	1,439	1	0	0											
NV	91,210	149	9	1				45	93	42	9				
NM	0	0	0	0											
OR	26,445	14	4	0			4	7	20	2					
UT	23,349	25	0	0				1	7	17					
WY	4,455	406	3	1					2	404					
Total	230,607	1,244	23	2		13	50	89	345	606	27	12	2	8	

Claims are located for all forms of commodities under the mining laws.

STATE: California -- Open to All Mineral Entry Under 202(d) of FLPMA

Action Number	Area opened	Claims located after opening	Operating Under 43 CFR 3009	Plan	Date of opening order	Number of claims located by year									
						80	81	82	83	84	1	2	3	4	5
111 R	06057	120	2	0	0	0	0	0	0	0	0	0	0	0	0
CA	2824W/R	15	4	0	0	0	0	0	0	0	0	0	0	0	0
CA	7024W/R	139	5	0	0	0	0	0	0	0	0	0	0	0	0
CA	7025W/R	25	4	0	0	0	0	0	0	0	0	0	0	0	0
CA	7756W/R	28	3	0	0	0	0	0	0	0	0	0	0	0	0
S	4207W/R	20	3	0	0	0	0	0	0	0	0	0	0	0	0
R	02354W/R	110	6	0	0	0	0	0	0	0	0	0	0	0	0
S	4885W/R	20	3	0	0	0	0	0	0	0	0	0	0	0	0
S	077039W/R	70	32	0	0	0	0	0	0	0	0	0	0	0	0
CA	7758W/R	203	7	0	0	0	0	0	0	0	0	0	0	0	0
S	2507W/R	55	2	0	0	0	0	0	0	0	0	0	0	0	0
CA	7105W/R	5	5	0	0	0	0	0	0	0	0	0	0	0	0
CA	7107W/R	1	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7114W/R	1	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7115W/R	8	2	0	0	0	0	0	0	0	0	0	0	0	0
CA	7118W/R	5	3	0	0	0	0	0	0	0	0	0	0	0	0
CA	7119W/R	82	28	0	0	0	0	0	0	0	0	0	0	0	0
CA	7120W/R	10	3	0	0	0	0	0	0	0	0	0	0	0	0
CA	7121W/R	15	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7123W/R	3	2	0	0	0	0	0	0	0	0	0	0	0	0
CA	7124W/R	626	54	2	0	0	0	0	0	0	0	0	0	0	0
CA	7131W/R	13	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7134W/R	23	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7137W/R	95	2	0	0	0	0	0	0	0	0	0	0	0	0
CA	7161W/R	125	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7164W/R	5	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7171W/R	86	1	0	0	0	0	0	0	0	0	0	0	0	0
CA	7218W/R	21	38	0	0	0	0	0	0	0	0	0	0	0	0

Claims are located for all forms of commodities under the mining laws.

Claims are located for all forms of commodities under the mining laws.

Action Number	Area opened	Claims located after opening	Operating Under 43 CFR 3009	Plan	Date of opening order	Number of claims located by year									
						80	81	82	83	84	1	2	3	4	5
110	2033	1	0	0	0	0	0	0	0	0	0	0	0	0	0
A	2153	2	0	0	0	0	0	0	0	0	0	0	0	0	0
A	3478	5	0	0	0	0	0	0	0	0	0	0	0	0	0
A	3639	4	0	0	0	0	0	0	0	0	0	0	0	0	0
A	4445	49	0	0	0	0	0	0	0	0	0	0	0	0	0
A	6369	1	0	0	0	0	0	0	0	0	0	0	0	0	0

STATE: Arizona -- Open to All Mineral Entry Under 202(d) of FLPMA

Action Number	Area opened	Claims located after opening	Operating Under 43 CFR 3609 Notices	Plans	Date of opening order	Number of claims located by year											
						80	81	82	83	84	1	2	3	4	5		
011	C 081299	265	18	0	0	9-28-83											
	C 083416	105	7	0	0	9-28-83					05	3					
	C 083451	260				9-28-83			4		3						
	C 083452	544	13	0	0	9-28-83					03						
	C 083453	1,233				9-28-83											
	C 083472	1,000	38	0	0	9-28-83					38						
	C 8085	130	8	1	0	5-21-81					8						

Claims are located for all forms of commodities under the mining laws.

[illegible]

* Claims are located for all forms of commodities under the mining laws.

Number of claims located by year

Region	Number of areas opened	Claims located after opening	Operating Under 43 CFR New Sources Plans	Date of opening order	Number of claims located by year										
					80	81	82	83	84	1985					
101	1,167	430	12	0	0	7/31/80	12								

STATE: Montana - Open to All Mineral Entry Under 20240 of FLPMA

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3009 Notices Plans	Date of opening order	Number of claims located by year										
					80	81	82	83	84	1	2	3	4	5	
III M 1361	1,439	1	0	0	7/9/82					1					

STATE: Nevada - Open to All Mineral Entry Under 202(d) of FLPMA

Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Plans	Date of opening order	Number of claims located by year				
						80	81	82	83	84
III 257		1	0	0	10/31/83					
25710	56,343	4	0	0	10/31/83					7
1575		2	0	0	10/31/83					
1025	80	12	1	0	12/22/82				12	
1574	1,280	7	0	0	01/03/83					7
049008	428	19	0	1	02/05/82			5	34	
049787	144	1	0	0	02/17/82				1	
049778	80	9	1	0	10/29/81			4		4
049805	14,413	3	0	0	11/30/81			3		
049794	15,794	17	4	0	10/29/81			5	6	5
043486	40	3	0	0	10/14/81			1		
970	480	2	0	0	04/17/81			2		
3557	40	12	0	0	06/05/82			3		12
29762	118	3	0	0	08/27/81					
0669	669	12	0	0	18/12/81					12
5756	275	1	1	0	08/20/81					1
030	946	20	1	0	08/20/81			20		
15497	80	1	1	0	18/30/81					1

Claims are located for all forms of commodities under the mining laws.

Claims are located for all forms of commodities under the mining laws.

STATE: Oregon - Open to All Mineral Entry Under 202(d) of FLPMA										
Action Number	Areas opened	Claims located after opening	Operating Under 43 CFR 3809 Notices	Plans	Date of opening order	Number of claims located by year				
						80	81	82	83	84
III OR 6409A	25,075	18	4	0	8/6/82				15	2
OR 13499	1,238	5	0	0	2/3/82				5	
OR 14746	40	7	0	0	4/15/82			7		
OR 6113	72	4	0	0	6/17/81		4			

STATE: Utah - Open to All Mineral Entry Under 2021d of FLPMA

Action Number	Areas covered	Claims Incurred after opening	Operating Under 43 CFR New Services Plans	Date of opening order	Number of claims Incurred by year													
					60	61	62	63	64	1	2	3	4	5				
111	L- 2923	1,061	6	0	0	5	3	82										
	L- 4933	8,987	3	0	0	6	30	82	3									
	L- 6150	285	2	0	0	12	31	81	2									
	L- 7041	2,723	2	0	0	2	16	82	2									
	L- 8151	1,277	1	0	0	5	15	82		1								
	L- 12307	8,916	11	0	0	1	4	83			10							

© Terms are based on all forms of commodities under the mining laws

STATE: Wyoming - Open to All Mineral Entry Under 202(d) of PLPMA

[illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, *ET AL.*, DEFENDANTS

DECLARATION OF G. WILLIAM LAMB

I, G. William Lamb District Manager of the Bureau of Land Management's Arizona Strip District, declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief.

There have been several withdrawals and classifications placed on the public lands in Arizona north of the Colorado River known as the Arizona Strip.

In 1930 Executive Order 5339 withdrew a large area along the Colorado River including a portion of the Shivwits Plateau (see attached map for detail). The withdrawal segregated the land from all forms of land disposal but was left open for metalliferous mineral exploration which included uranium, copper and other hard rock minerals. In 1948 a portion of that withdrawal located on the Shivwits Plateau was revoked. In 1964 Lake Mead National Recreation Area was established, and in 1975 the Grand Canyon was enlarged, these two Congressional land actions covered the major portion of the 1930 withdrawal and provided greater protection from mineral exploration than the original withdrawal. The remaining portion of the 1930 withdrawal was revoked in 1981 and 1982. There

is, however, over 100 sections of land within the original 1930 withdrawal on the Shivwits and Sanup Plateaus that are privately owned minerals that were not subject to the withdrawal segregations.

Departmental Orders between the years of 1953 and 1963 withdrew approximately 65,000 acres for water storage projects on the Colorado River below Glen Canyon. This action withdrew the land from all forms of appropriation under the public land laws, but in 1954 they were opened to mining location, entry and patents. With designation of the Paria Canyon Primitive Area in 1969 and establishment of the Glen Canyon National Recreation Area (NRA) in 1972, approximately 23,000 acres were returned back under the operation of the public land laws in 1981. The remaining acres were retained for Glen Canyon NRA and the Paria Primitive area. In 1984 approximately one half of the 23,000 acres that was lifted was included within the Paria Canyon-Vermilion Cliffs Wilderness Area. Approximately 42,000 acres of the original withdrawal continues to be protected under those withdrawals. Of these 42,000 acres approximately 30,000 acres are found within the Glen Canyon NRA, the Grand Canyon National Park, or the Paria Canyon-Vermilion Cliffs Wilderness Area. This provides double coverage from all form of land appropriation, but leaves the area open for water impoundment and storage along the Colorado River and its tributaries.

Between 1967 and 1970 approximately 2,566,000 acres of public land on the Arizona Strip was classified for multiple use management under the Multiple Use and Classification Act of 1964. This segregated the land from sale, agricultural and exchange laws except for 8,219 acres that was further segregated from the mining laws (see attached map for location of the 8,219 acres). Since these

classifications were determined to be unnecessary after the passage of FLPMA they were terminated in 1981. However, approximately 3,300 acres of the 8,219 acres which were segregated from the mining laws are still included in the Virgin River Gorge scenic withdrawal or the newly designated wilderness areas which continue to segregate these areas from all form of appropriation.

The majority of the land in the Arizona Strip has always been open to metalliferous exploration and development including uranium mining. While the actions taken since 1981 did open some of these lands to the mining laws, this is likely to have little effect on the uses of these lands because in our opinion they do not contain any nonmetalliferous mineral that can be economically mined.

/s/ G. William Lamb
G. WILLIAM LAMB

[handwritten]
9-4-86

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, ET AL., DEFENDANTS

DECLARATION OF JACK KELLY

I, Jack Kelly, under penalty of perjury state:

1. I am presently employed as the Lander, Wyoming Resource Area Manager, Bureau of Land Management (BLM), U.S. Department of the Interior, Lander, Wyoming.

2. I have served in my present position with the BLM since September 1983. Prior to that, I served as Assistant District Manager, Lands and Renewable Resources, for the Rawlins, Wyoming District of the BLM, from November 1978 to August 1983. On occasion during that period, I served as acting District Manager, Rawlins District. To date, I have been employed by the BLM over a period of fifteen (15) years.

3. My current job responsibilities include overall management and supervision over BLM's land management activities in the Lander Resource Area, which comprises in excess of 2.5 million acres of public domain lands situated in west-central Wyoming. Included within this large area is an area comprising approximately 1.2 million acres known as the Green Mountain area.

4. The Green Mountain area is basically composed of three relatively discrete areas. The Green Mountain-Crooks Mountain area is located in the southern portion of the overall area, and is situated approximately 60 miles east-southeast of Lander and immediately to the southwest and southeast of Jeffrey City, Wyoming. The predominate features of the area are Green Mountain and Crooks Mountain, each of which rises in excess of 2,000 feet above the surrounding plains and is characterized by steep slopes and dense lodgepole pine forests interspersed with meadows near the upper portion of the mountains. The Green Mountain-Crooks Mountain area is noteworthy primarily for its timber resources, deer and elk herds, recreation, and its valuable deposits of uranium.

5. The South Pass Area is located approximately 24 miles due south of Lander and is situated at the south end of the Wind River Mountain range. It is an important recreation area, and people come there to fish, hunt, camp, or partake of the rich historical and cultural heritage that exists by virtue of the South Pass Mining District, an active gold mining area that has been actively mined, commercially or recreationally, from the mid-19th century to the present.

6. The third general part of this area encompasses a vast amount of lands lying basically between the Green Mountain-Crooks Mountain Area and the South Pass Area, together with substantial amount of land lying to the south and north. This "third area" is significant for its rangeland, its fisheries, its wildlife habitat, for recreation, and for its important cultural resources, and for its leasible and locatable mineral resources.

7. Because of the rich ecological diversity of this area and because of its economic, environmental, recreational, and historical importance to the public, this area has been

carefully managed by BLM for many years. Of crucial significance to BLM's management efforts has been the development of comprehensive land use plans for the area.

8. Prior to 1977, the Green Mountain and South Pass areas were covered with the following land use plans:

- a. West Lander MFP
- b. Grainte Mountain MFP
- c. "Below the Rim" MFP
- d. Seven Lakes MFP

These were prepared and completed between 1969 and 1976.

9. In 1977, partly in anticipation of the need to prepare an environmental impact statement (EIS) on grazing and range management for the area, BLM began the process of preparing a new land use plan encompassing all of the Green Mountain area. This plan denominated a Management Framework Plan (MFP) in accordance with BLM's then applicable Manual, was to be prepared by personnel in the Lander Resource Area in cooperation with the Rawlins District Office and, to a lesser extent, with personnel from the Wyoming State office.

10. The initial steps in this planning effort consisted of the preparation of a Unit Resource Analyses (URA) for the entire area and the initiation of public involvement and participation efforts by BLM.

11. The Unit Resource Analyses for the MFP (named the Sweetwater and South-Moneta MFP or commonly called Green Mountain MFP) was prepared during 1977 and 1978. This MFP will hereinafter be referred to as the Green Mountain MFP. It consisted of the following steps:

- (a) URA Step 1 involved the preparation of a base map for the planning area. The base map indicated the boundaries of the planning unit, the areas ultimately to be covered by the Green Mountain

Grazing EIS, and land status (*i.e.*, ownership, withdrawals, etc.) of the lands within the planning unit.

(b) URA Step 2 involved a detailed description of the basic geographic and environmental characteristics of the overall area. This included information concerning climate, topography, vegetation, water resources animals (wild and domestic), fire dangers, any physical factors that would limit management opportunities and the kinds and amounts of resource development in the area.

(c) URA Step 3 involved the preparation of a description of the present management situation: *i.e.*, the status of wild/horse and range management, forestry, wildlife habitat, recreation, lands, and minerals.

(d) URA Step 4 involved a detailed analysis of the potential uses and opportunities for management with respect to each of the various resources in the area managed by BLM.

(e) The URA also included the preparation of an ecological profile of the area. Its purpose was to ascertain and describe any unique or fragile areas within the planning unit, including any areas of Critical Environmental Concern, to define the predominate land uses within the area, and to identify all important management consideration [*sic*] that would need to be taken into account in order to develop a land use plan sensitive to preserving and enhancing areas of ecological impacts.

In carrying out the URA process for the Green Mountain MFP, BLM followed the BLM Manual requirements set forth in BLM Manual Part 1605. Included within that process was an identification of the existence of any lands

segregated or withdrawn from multiple use management, including segregation from the application of the mining laws. (BLM Manual, § 1605 _____).

12. A true, genuine, and correct copy of the URA for the Green Mountain MFP, which was completed in 1978, is attached hereto and incorporated herein by reference as Exhibit 1.

13. During the period in which the URA was being prepared, BLM also initiated its public participation program for the Green Mountain MFP as well as the Green Mountain Grazing EIS. During 1977-1978, BLM engaged in approximately 80 individual contacts with the public regarding upcoming planning and EIS work for the area. These contacts consisted of telephone calls, personal interviews and discussions, receipt of correspondence from members of the public, group meetings and workshops. Each such contact was documented on a Form 1600-16. True, genuine and correct copies of the forms 1600-16 covering the period October 1976 to October 1978 are attached hereto and incorporated herein by reference as exhibits 2 and 3.

14. Throughout this same period, BLM was also conducting a number of other efforts to generate data and information to be used in the MFP and the Grazing EIS. Between 1976 and 1979 BLM conducted a stage II U.S. Forest Service intensive forest inventory to determine the volume/acre by timber type for use in managing commercial timber operations on the Lander Resource Area. During the same period, BLM conducted a vegetative survey for the Green Mountain area in order to collect information on plant composition and use by livestock. This information would later be used to determine carrying capacities and proper use levels by livestock (and wild horses) for each grazing allotment area. BLM conducted

wildlife inventories throughout the period and also obtained wildlife and fisheries data from the Wyoming Game and Fish Commission. Also, other data collecting efforts, such as minerals and soils inventories, were being conducted.

15. In 1978 and early 1979, BLM completed the MFP Step 1 process. This consisted of the development of objectives and recommendations by a team of resource specialists for the management of each resource within the area. The objectives and recommendations developed at this stage of the planning process were oriented towards managing the land so as to maximize the potential for each resource independently of every other resource in the area (*i.e.*, a "Blinders On" approach). Under this approach, for example, the wildlife specialist developed objectives and made planning recommendations oriented solely to the maximum enhancement of the area for wildlife habitat. The mineral and range management specialists did likewise for their respective resources. The purpose of this approach was to develop a set of proposals reflecting the optimum management possibilities for each resource. If, later in the planning process (*i.e.*, MFP Step II) conflicts with other resource objectives surfaced, the decisionmaker through this process would be assured of having before him a full range of management options for each resource. Similarly, if no such conflicts were to develop, this approach ensures that "non-conflict" resources could be managed at their optimum level.

16. During the summer of 1979, BLM developed draft MFP Step II recommendations. MFP Step II consisted of a multiple-use analysis of all of the objectives and recommendations developed by the resource specialists in Step I. This included an analysis of all of the potential social, economic, institutional, and environmental values in-

involved in or affected by the Step I recommendations, together with some tentative [*sic*] recommendations with respect to how conflicts in Step I objectives and recommendations might be resolved.

17. During the period when MFP Steps I and II were undertaken, BLM continued involving the public in its planning process. True, genuine and correct copies of its Forms 1600-16 reflecting the public involvement activities of BLM from October 1978 through October 1979 are attached hereto and incorporated herein by reference as Exhibit 4. Among the activities undertaken were meetings with the Green Mountain Monitoring Group (3/26/79), and meetings and contacts with ranchers, the Wyoming State Oil and Gas supervisor (7/26/79), the Forest Service, and many others. In addition, on July 30, 1979, BLM sent a letter to all interested individuals enclosing a discussion and brief explanation of the draft MFP-Step II proposals and announcing that an open house would be held on August 21 and 22, 1979, and that a public meeting would be held on the evening of August 22, 1979, to receive the public comments on the draft MFP Step II proposals. A copy of the July 30, 1979, letter and enclosure is included within Exhibit 4, *supra*. A true, genuine and correct copy of the mailing list reflecting the persons or individuals to whom this letter was sent is attached as Exhibit 5.

18. On August 21 and 22, 1979, an open house on the draft MFP Step II proposals was conducted at the Lander Resource Area Office.

19. On the evening of August 22, 1979, a formal public hearing was held at the Lander Valley High School Auditorium. The purpose of the public hearing was to explain to the public BLM's land use planning process and to provide the public with an opportunity to comment on the draft MFP-Step II proposals. The proposed review of the

areas segregated from mining location pursuant to classification W-6228 were specifically discussed by the Lander Resources Manager (see Transcript, at 9). The hearing was also devoted to obtaining public input relative to identifying important issues to be addressed in the Green Mountain grazing EIS. A true, genuine and correct copy of the Transcript of the August 22, 1979 public hearing is attached hereto and incorporated herein as Exhibit 6. In addition, a true, genuine, and correct copy of the record of the public open houses on August 21 and 22, 1979, is attached hereto and incorporated herein as Exhibit 7.*

20. Following the Public Hearing, BLM continued work on the Green Mountain MFP. By November of 1981, BLM had completed the process of reaching proposed MFP Step III multiple use decisions based on the Step II recommendations and multiple use analysis and on the input received from the public. On Wednesday, September 30, 1981, BLM published a notice in the Federal Register indicating that BLM would in fact be preparing a grazing EIS for Green Mountain based on range management planning recommendations developed pursuant to the MFP process. The Notice also announced a public scoping meeting to be held on November 2, 1981. The purpose of the meeting was:

- (1) to provide the public with an opportunity to comment on [the] proposed management framework plan decisions not directly related to rangeland management; (2) to present rangeland management multiple use planning recommendations to the public; (3) to inform the public of the proposed action and tentative

* Written comments received relative to BLM's MFP Step II proposals are including within Exhibit 4.

alternatives that BLM proposes to analyze in the EIS; (4) to gather resource information from the public; and (5) to identify concerns and issues important to the public for possible inclusion into the EIS or into planning system decisions. Comments received at this scoping meeting will be used in developing the EIS and the planning decisions that result.

46 Fed. Reg. 47873.

A true, genuine and correct copy of the above-referenced Federal Register Notice is attached hereto and incorporated herein by reference as Exhibit 8.

21. On November 2, 1981, the above-indicated public hearing was held at the Fremont County Library in Lander, Wyoming. The proposal to review lands segregated from mineral entry were [sic] once again discussed by the Lander Resources Manager at the hearing. (See Transcript, at 9). A true, genuine and correct copy of the transcript of the public hearing is attached hereto and incorporated herein by reference as Exhibit 9. A true, genuine and correct copy of the attendance list at the hearing is attached hereto and incorporated herein by reference as Exhibit 10.

22. On December 2, 1981, 30 days subsequent to the November 2, 1981 public hearing, the Green Mountain MFP Step III decisions not directly relating to rangeland management became final.

23. Throughout the above-described MFP process, attention was given to whether a number of then existing segregations from the general mining laws, 30 U.S.C. § 21 *et seq.*, should be continued. The most significant of these segregations was imposed as a result of a then-existing Multiple Use classification dating back to 1967 (as amended in 1970).

24. On November 22, 1967, approximately 2,077,702 acres of public lands in the general Green Mountain-South Pass area in Fremont and Natrona Counties in Wyoming were classified for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411. All of this land was thereby segregated from appropriation under the agricultural land laws and from sales pursuant to Section 2455 of the Revised Statutes (43 U.S.C. § 1171). In addition, approximately 4,128 acres within this area was further segregated from appropriation under the general mining laws, 30 U.S.C. § 21. (See 32 Fed. Reg. 16057, with reference to Multiple Use Classification W-6228).

25. On December 1, 1970, this classification was amended in order to segregate an additional 2,251 acres in Fremont County, Wyoming, from the operation of the general mining laws. (See 35 Fed. Reg. 18682-83, December 9, 1970).

26. True, genuine, and correct copies of both of the above classification notices are included within the certified copy of the complete multiple use management classification File W-6228 (W-6228 File) attached hereto and incorporated herein by reference as Exhibit 11.

27. Of the total 6,373 acre area segregated from operation of the general mining laws, 1,825.93 acres were in the Green Mountain-Crooks Mountain area; 3,773 acres were in the South Pass area, and an additional 610 acres were scattered throughout the Lander Resource area on four sites: Castle Gardens (80 acres); Lost Cabin (320 acres); Beaver Rim (170 acres); and Hall Creek (40 acres). The location of these scattered tracts are more particularly described in the Environmental Assessment land report on the C&MU classification Review of W-6228, included within the W-6228 file. The Lost Cabin tract (320 acres)

and the Castle Garden Tract (80 acres) were not encompassed within the Green Mountain MFP.

28. Throughout the URA, Planning Area Analysis (PAA), and MFP processes, consideration was given to the need to review the mineral entry segregations in the Green Mountain and South Pass areas created by W-6228 in order to determine whether their retention was still necessary or appropriate. In the Minerals Section of the MFP, for example, the MFP Step I Objective was stated as being to open to mineral location approximately 9,800 acres in the South Pass Mining District then segregated from mineral location, (Sweetwater MFP M-7).^{*} In keeping with that objective, the MFP Step I recommendation was that the mineral entry segregation for the South Pass area established by W-6228 be revoked by 1984. (Recommendation M-7.1).^{**}

29. Similarly, in the uranium portion of the minerals section there was an MFP Step I recommendation that the mineral segregation established by W-6228 be revoked on Green Mountain because of the existence of valuable and important uranium deposits located in this area. (Recommendation M-5.3).

30. During the MPF-Step II Multiple Use Analysis, several conflicts with other resource programs were identified. With respect to the South Pass area, it was noted that the original segregations were made to protect the areas for recreational use. It was further noted that most

^{*} This 9,800 acres included lands in four old mining districts—South Pass, Miners Delight, Atlantic City, and Lewiston. Approximately 3,800 of these acres were segregated from mineral entry by virtue of Classification W-6228.

^{**} The rationale for this recommendation was the possible existence of a multi-million dollar gold deposit within the South Pass District, the rising value of gold, and the then existing U.S. gold deficit.

of the segregated sites were located within the South Pass Historic District, and classed as "Class 2" visual area, and that new mineral exploration or development could interfere with the areas' value for this purpose. The Step II analysis also noted potential adverse affects [sic] on important historic or cultural sites, with forestry management, and with the maintenance of important fish and wildlife habitat.

31. As a result of the Step II Multiple Use Analysis, the Step I recommendation was modified to call for a careful site-by-site multiple use evaluation in accordance with FLPMA to determine—for each site—whether the existing segregation should be retained, modified, or eliminated. (Multiple Use Analysis and Recommendation, M-7.1).

32. A similar Multiple Use Analysis was undertaken with respect to the segregations in the Green Mountain area. After noting potential conflict with existing campgrounds, important visual or scenic resources and important fish and wildlife habitat, the Step I recommendation to eliminate the segregation in total was modified to provide for a site-by-site multiple resource evaluation to determine whether the segregation should be retained, modified, or revoked. (Multiple Use Analysis and Recommendation, M-5.3).

33. The above-referenced Step I Recommendations and Step II Multiple Use Analysis and Recommendations (in draft form) were made available to the public at the August 21-22, 1979 open houses and at the August 22, 1979 public hearing. In addition, the Step I Recommendations, the final Step II Multiple Use Analysis and Recommendations, and BLM's proposed Step III decisions were presented to the public for review in connection with the November 2, 1981 public hearing on the Green Mountain MFP.

34. Following the completion of the MFP, BLM undertook the site-by-site multiple use analysis of these mineral segregations pursuant to the decisions reached through the MFP process. On September 23, 1982, that review was completed. On that date, BLM issued its Decision Record, which consisted of an Environmental Assessment/Land Report Wy031-2-1776, mineral reports, maps, and other attachments. BLM's final decision was to terminate the mineral segregation on approximately 5,120 acres of the 6,379 acres originally segregated by W-6228. By area, the segregation was to be retained on approximately 959 acres in the South Pass area in order to protect wildlife values (Environmental Assessment, Part II Recommendation and Rationale); retained on approximately 120 acres in the Green Mountain area in order to protect significant recreation sites (Environmental Assessment, Part I Recommendation and Rationale); and retained on approximately 180 acres in the Castle Gardens (80) and Beaver Rim (100) areas in order to protect respectively an important archeological site and a proposed "Area of Critical Environmental Concern." (Environmental Assessment, Part III Recommendations and Rationales).

35. BLM made four separate consistency determinations with regard to the foregoing review. First, in its Categorical Exclusion Decision Record with regard to the termination of Classification W-6228 (exclusive of the mineral segregations), BLM concluded that termination was consistent with the Sweetwater-Moneta MFP (Attachment "D", Environmental Assessment/Land Report). Second, with regard to the mineral segregations on Green Mountain and in the South Pass area, BLM made separate determinations that each modification was consistent with the Sweetwater (or Green Mountain) MFP, Sections M-5.3 and 7.1, respectively. (Decision Factors, Parts I and II, Environmental Assessment/Land Report). Finally, with

regard to the scattered tracts, BLM determined that the proposed modifications with regard to the Beaver Rim Area were consistent with Moneta (Green Mountain) MFP Sections M-4.1, F-2, and WL-9-1.1. While no such specific finding was made, with respect to [sic] the Hall Creek area, it is my judgment that termination of the mineral segregation with respect to it (40 acres) was also consistent with the Green Mountain MFP. The other two scattered tracts—Castle Gardens (80 acres) and Lost Cabin (320 acres) were located within the “Below the Rim” MFP Planning Unit. As noted above, the decision was made to retain the Castle Gardens mineral segregation in its entirety. With respect to the Lost Cabin mineral segregation, while no specific consistency determination with the Below the Rim MFP was made, the Environmental Assessment/Land Report demonstrates the lack of any continuing justification for this isolated segregation and its termination was not in my judgment, inconsistent in any respect with the “Below the Rim” MFP.*

36. Subsequent to the issuance of BLM’s Decision Record and Environmental Assessment/Land Report, the Wyoming State Game and Fish Department raised some additional concerns regarding the impacts that terminating mineral segregations in the South Pass area might have on critical winter moose habitat. In addition, individuals interested in mining opportunities in the South Pass area

* The “Below the Rim” MFP was completed in 1972. It was reaffirmed and determined to be in compliance with FLPMA’s land use planning requirements in March of 1980 pursuant to 43 C.F.R. § 1601.8 (1/79). In that connection, it was determined that the “Below the Rim” MFP fully complied with FLPMA’s principles of multiple use and sustained yield management, and was prepared and developed with sufficient opportunities for public participation and with sufficient intergovernmental coordination with state, county, and local agencies.

raised concerns regarding the retention of some segregations. Between September of 1982 and March of 1984, BLM reviewed its September 23, 1982 Decision in light of these concerns.

37. As a result of that review, BLM determined that the segregation on an additional 768.47 acres in the South Pass area be retained in order to protect high value wildlife habitat. (March 26, 1984 Memorandum from Rawlins, District Manager to the State Director, which is included within the W-6228 File).

38. As a result of the above change, BLM’s final determinations was [sic] to terminate W-6228’s mineral segregation with respect to 4,455.06 acres, and to retain the segregation on 1,913.47 acres. This final determination was announced in the Federal Register on May 10, 1984 (49 Fed. Reg. 19904-05, a copy of which is included within W-6228 File).

39. In December of 1982, the Green Mountain Final Grazing EIS, which was prepared in conjunction with the 1981 Sweetwater-Moneta MFP, was issued in final form.

40. Finally, it should be noted that BLM has undertaken additional planning activities in the Green Mountain-South Pass area, and that those activities have included a further evaluation of whether—in whole or in part—lands within the area should be segregated from mineral entry.

41. In January of 1984, BLM announced that it was initiating a Resource Management Plan for the Lander Resource area. (49 Fed. Reg. 3278 [January 26, 1984] a true, genuine and correct copy of which is attached hereto and incorporated herein as Exhibit 12). In connection with this process, open house—public meetings were held in Lander, Jeffrey City, Atlantic City, and Dubois on November 5-8, 1984, in order to collect data, to receive

input from the public, and to explain the RMP process to the public.

42. In November of 1985, the Draft Lander Resource Area RMP/Environmental Impact Statement was published. Among the alternatives considered with respect to the South Pass area were ones addressing whether the entire South Pass area should remain open to mining (excepting the areas kept segregated pursuant to the 1984 W-6228 decision); whether the entire area previously segregated should be withdrawn from mineral entry; whether the entire area should be opened to mining, but under circumstances where approved plans of operation would be required for all mining activities; and whether the present situation, including the segregations retained by the 1984 W-6228 Decision, should be maintained, except that all future mining activities in the area would require approved plans of operation (the preferred alternative).

43. Almost the same array of alternatives was provided with respect to the Green Mountain area, except that the draft failed to consider as an alternative whether the areas previously segregated from mining by W-6228 should now formally be withdrawn. This alternative will, however, be included in the Final RMP/EIS as a result of comments from, among others, the plaintiff in the above-captioned litigation.

44. On December 11 and 12, 1985, public hearings were held on the draft RMP/EIS in Dubois and Lander, respectively. The hearings were announced in the Federal Register on November 5, 1985 (50 Fed. Reg. 45943, a true, genuine and correct copy of which is attached hereto and incorporated herein by reference as Exhibit 13).

45. On November 7, 1985, BLM also announced its intention to prepare a Wilderness Study Supplement to the RMP/EIS, the scoping meetings for which were held in

conjunction with the above noted public hearings on the draft (50 Fed. Reg. 46361, a true, genuine and correct copy of which is attached hereto and incorporated herein by reference as Exhibit 14).

46. On February 18, 1986, BLM received written comments on the Draft RMP/EIS from the National Wildlife Federation.

47. On February 14, 1986, the 90 day comment period on the Draft RMP/EIS ended. A true, genuine, and correct copy of the Draft RMP/EIS is attached hereto and incorporated herein by reference as Exhibit 15.

48. On or about October 30, 1986, the Final RMP/EIS on the Lander Resource Area, which includes the area covered by W-6228, will be distributed to the public.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 4th day of September, 1986.

/s/ JACK KELLY

Jack Kelly

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, DONALD P. HODEL, AND THE UNITED
STATES DEPARTMENT OF THE INTERIOR, DEFENDANT

DECLARATION NO. 2 OF VINCENT J. HECKER

I. INTRODUCTION

1. I, Vincent J. Hecker, Chief, Division of Lands, of the Bureau of Land Management (BLM), United States Department of the Interior, hereby declare under penalty of perjury that the information contained in this declaration is true and accurate to the best of my knowledge. Some of the details in this declaration have been supplied by my subordinates or other sources within BLM.

2. A withdrawal is the means by which a specified tract of land is removed, *i.e.*, segregated, from the application or operation of one or more of the public land laws. See James Parker Affidavit at ¶ 5. During the early 1900s, the vast majority of the public lands of the United States were open to appropriation under a variety of laws, *e.g.*, the Homestead Act, the Mining Law of 1872, the Isolated Tract Act, and the Small Tract Act. Withdrawals were used to remove the lands from the operation of these laws and, generally, to reserve the lands for specific uses, *e.g.*, a military base. Federal agencies could also request

that lands be withdrawn on their behalf for specific agency purposes, *e.g.*, lands were withdrawn for the Bureau of Reclamation for use in dam construction or agricultural development or by the military departments for various defense needs.

3. Although withdrawals were made as early as the Nineteenth Century by the President, the first congressional authority for Presidential withdrawals was enacted in 1910, 36 Stat. 847 (Pickett Act). This act specified that withdrawals were "temporary" in nature, and that the segregative effect of a withdrawal would continue until the withdrawal was modified, revoked or vacated. By the mid 1950's faced with a large number of withdrawals, covering millions of acres of the public lands, Interior concluded that some form of withdrawal review was necessary. Many withdrawals were outdated, proposed projects abandoned, land character changed and/or the best utilization of the lands lay in some other land management function. In addition, numerous agencies on whose behalf a withdrawal had been made either no longer had a need for it or in a few instances, the agency itself had ceased to exist

4. The early objective of withdrawal review were:

- (a) To reduce withdrawals to the minimum level consistent with program purposes;
- (b) To maximize public and private use of withdrawn lands consistent with the purpose of the withdrawals; and
- (c) To eliminate all unnecessary withdrawals.

See Exhibit 2 to Edwards' Affidavit 1B and accompanying texts. Efforts were also made to coordinate withdrawal review with general land use planning activities. See *id.*

5. With the enactment of the Federal Land Policy Management Act in 1976 (FLPMA), the Secretary of the Interior (Secretary) received general authority to "make,

modify, extend or revoke" withdrawals under Section 204(a). This general authority has been used to revoke withdrawals since the passage of FLPMA. For a detailed discussion of the procedures relied on to revoke withdrawals, see Edwards Affidavit 1A at ¶ 5- ¶ 11; Parker Affidavit ¶ 19-¶ 23 and accompanying exhibits.

6. In 1980, the Solicitor's office issued an opinion which concluded that the withdrawal review and termination provisions of section 204(l) were self-contained. It further stated that withdrawals could be revoked, if necessary, under the authority of section 204(a) of FLPMA in order to complete ongoing projects, *e.g.*, exchanges, sales, State in-lieu selections and relinquishments in the "ordinary course of business." Thus, individual proposed revocation action arising in the ordinary course of business, including withdrawals relinquished by other Federal agencies as no longer needed, could be completed under section 204(a). Moreover, section 204(l), by its own terms was limited both geographically and to certain types of withdrawals. Even though BLM was undertaking to move forward with withdrawal revocations in the 1970s, it was still criticized by the General Accounting Office in 1982 for not giving priority to reviewing and terminating withdrawals which segregated the land from mineral entry and development. See exhibit 23 to Edwards' affidavit 1B.

7. Withdrawals which were revoked in the ordinary course of business were grouped into two broad categories:

A. *Withdrawal relinquishments.* A withdrawal is relinquished when the Department or agency (holding agency) on whose behalf the withdrawal was made files a notice of intent to relinquish the withdrawal along with supplying Interior with supporting documentation showing the land is no longer needed

for the purpose for which it was originally withdrawn. Prior to FLPMA's passage, a number of withdrawals had been relinquished by holding agencies (some of which dated back to the 1940s and 1950s) but which had not been processed to completion. Such relinquishments were made by holding agencies pursuant to regulations at 43 C.F.R. 2370 which were developed prior to FLPMA. Only after the revocation by the Secretary became effected [*sic*], were the lands "public lands" subject to BLM's administration. See ¶ 21 of Parker Affidavit for more detail on withdrawal relinquishment procedures. Hereinafter, withdrawal revocations following relinquishments by other Federal agencies are referred to as Category A revocations.

B. *Pending Land Actions.* On many occasions in the past, withdrawals were used to prevent alienation of the Government's title under certain discretionary public land laws, *e.g.*, exchange, State selection and sale laws. If the BLM received a request to sell or exchange or open the land to multiple use, the withdrawal prohibiting such a proposal, along with its segregative effect, had to be revoked or modified to permit implementation of the proposed action. However, prior to allowing the sale or exchange or specific use to proceed, appropriate NEPA compliance and public comment was obtained on the proposed action. Hereinafter, withdrawal revocations made to allow a subsequent proposed action to proceed are referred to as Category B revocations.

8. *Record Clearing.* A third basis for revoking withdrawals was simply for record clearing purposes. Record clearing falls into three general categories. First, over the years, public lands covered by withdrawals were

transferred from Federal ownership by various means including Reclamation homesteads. Yet, the withdrawals were never revoked. Second, some public lands were covered by one or more layered or overlapping, withdrawals which provided equal or greater protection and, thus, to revoke one had no effect on the land. Third, withdrawn lands were protected by congressional action, e.g., the withdrawals had been superseded through the creation of national recreation areas, monuments, or parks. However, as the withdrawals in these three categories were never revoked, the land records indicated that BLM or some other Federal agency retained jurisdiction over the lands and hence was responsible for their management in accordance with FLPMA's objectives of multiple use and sustained yield. In order to reconcile the public land records with the current status of the land, withdrawals were deleted from the public records as a mere record clearing action. Hereinafter, withdrawals revoked for purposes of record clearing are referred to as Category C revocations.

9. The Bureau also revoked some withdrawals on its own initiative. Withdrawals revoked that fall within this category such as stock driveway withdrawals, are those that meet none of the three previously described categories and do not fall within any other legal prescription. These refer to withdrawals not covered by 204(f) either as to the type of withdrawal or as to the geographical location of the withdrawal. Hereinafter, withdrawals revoked on BLM's own initiative are referred to as Category D revocations.

10. Since January 1, 1981, the Secretary has issued 647 public land orders revoking or modifying a total of 18,991,920 acres. The general effect of the revocations was to restore the land to multiple use management pursuant

to Section 102(a)(7) of FLPMA. These totals fall within the four categories defined above as follows¹:

- A. In category A, (withdrawals relinquished by other Federal agencies and revoked in the ordinary course of business), 194 withdrawals were revoked and/or modified covering 1,735,856 acres.
- B. In Category B, (withdrawals revoked to permit a proposed land action to proceed and thus revoked in the ordinary course of business), 72 withdrawals were revoked and/or modified covering a total of 90,651 acres.
- C. In Category C, (record clearing), 211 withdrawals were revoked and/or modified covering a total of 4,844,853 acres.
- D. In Category D, (BLM's own initiative), 170 withdrawals were revoked and/or modified covering a total of 12,320,560 acres. See exhibits 1-14.²

11. Due to the extensive number of withdrawals involved in revocation and modification actions since January 1, 1981, it is impossible to discuss with specificity each one. However, some random, representative examples follow with regard to each category.

¹ The PLO totals reflected herein have been calculated on the following basis: if they were revoked under the authority of more than one category, they have been counted only once and only in the category where the greatest amount of acreage appears.

² The figures in Exhibits 1-14 were derived from the Public Land Orders and supporting case files of the BLM. Every effort has been made to make them as correct as possible. However, we are continuing to review these statistics and, if necessary, we will file an errata sheet showing any corrections that are made in view of our ongoing review.

A. With regard to Category A revocations:

(1) PLO 5810 in Oregon had withdrawn 80 acres of lands for use by the Forest Service as a ranger station, within a national forest, which the Forest Service determined it was no longer needed and, thus, relinquished the withdrawal. The withdrawal was revoked on January 22, 1981. Also in Oregon, PLO 6412 revoked a withdrawal covering 238 acres that had been withdrawn on behalf of the Bureau of Reclamation in connection with the Rogue River Project which the Bureau of Reclamation had determined it no longer needed. This withdrawal was revoked on July 19, 1983.

(2) In Idaho, PLO 6568 revoked a withdrawal covering 120 acres on October 23, 1984, which had been withdrawn on behalf of the Bureau of Reclamation for the Southwest Idaho Water Management Study Area. The Bureau of Reclamation had determined that the area was no longer needed for its purposes.

(3) In the State of Florida, the Executive Order of October 29, 1900, had withdrawn 40 acres for use as a lighthouse by the military which was no longer needed. The withdrawal was relinquished, and subsequently revoked by PLO 6083 on November 19, 1981.

(4) In California, PLO 5931 restored 651 acres which had been withdrawn for the Department of Army for military training purposes. The revocation followed relinquishment by the Department of the Army, and became effective on May 29, 1981.

(5) In Arizona, PLO 5868 revoked a withdrawal involving 32,246 acres which had been

withdrawn on behalf of the Department of the Army in connection with the Yuma Test Station. Following the Department of the Army's determination that the withdrawal was no longer necessary, the withdrawal was relinquished by the Army and revoked by the Secretary on June 20, 1981.

(6) In the State of Nevada, a withdrawal had removed 640 acres from the operation of the public land laws for use by the National Park Service as an administrative site. Following relinquishment by the National Park Service, the withdrawal was revoked, and the lands restored to multiple use management on January 8, 1981, by PLO 5798.

(7) In the State of Utah, a withdrawal made on behalf of the Bureau of Reclamation in connection with the Bonneville Unit of the Central Utah Project was revoked on October 29, 1981, by PLO 6023 which restored 1,278 acres to multiple use management following relinquishment by the Bureau of Reclamation.

(8) In Colorado, 441 acres of public lands were withdrawn for the Bureau of Reclamation for the Collbran Project. Following a determination that the withdrawal was no longer needed, the withdrawal was relinquished by the Bureau of Reclamation and revoked by the Secretary on February 5, 1982, by PLO 6113.

(9) In New Mexico, PLO 5827 revoked a withdrawal covering 53,654 acres originally made on behalf of the Air Force for the operation of the Sacramento Peak Upper Air Research Site. Following relinquishment by the Air Force,

the Secretary revoked the withdrawal on January 23, 1981.

(10) In the State of Washington, the Coast Guard had withdrawn 11 acres for use as a light-house station. Following relinquishment by the Coast Guard, the withdrawal was revoked by the Secretary on February 5, 1982, by PLO 6120.

(11) Finally, in Montana, PLO 6205 revoked a withdrawal covering 287 acres which had been withdrawn on behalf of the Army for military purposes.

B. With regard to withdrawal revocations that fall within Category B:

(1) In Colorado, PLO 6102, revoked a 1944 powersite classification which lacked powersite values to "permit consummation of a pending exchange between the Forest Service and the Colorado State Board of Agriculture on 200 acres of land." The revocation became effective on February 5, 1982.

(2) In Utah, PLO 6599 revoked a withdrawal involving 40 acres as "the land has been identified for 'in lieu' State selection rights by the State of Utah." The revocation was effective on April 1, 1985.

(3) In Montana, PLO 6431 revoked a withdrawal covering 160 acres because such was "necessary to facilitate a Forest Service exchange." The revocation became effective on July 21, 1983.

(4) In the State of Washington, PLO 6447 revoked a withdrawal covering more than 6,500 acres, of which 1,319 acres "will be restored to State indemnity selection." It became effective on July 28, 1983.

(5) In Wyoming, PLO 6337 revoked a withdrawal covering 2.5 acres and "the subject land will not be restored to operation of public land laws since sale of the lands to private interest is planned." The revocation became effective on September 10, 1982.

(6) Finally, in Idaho, PLO 6426 revoked a withdrawal covering 320 acres to allow, in part, "consummation of the pending Forest Service land exchange with the State of Idaho."

The foregoing are examples of revocations falling within Category B that were completed in the ordinary course of business and permitted a then pending land transaction to be completed. The examples are not meant to be all inclusive. They constitute random, representative examples of the types of withdrawal revocations that are within Category B.

C. Category C, that is, record clearing, constitutes the largest category of revocations in terms of PLOs effected by the Secretary since January 1, 1981. One-third of all revocations are in this category.

(1) In the State of Idaho, PLO 6436 revoked a withdrawal involving 260 acres which "were conveyed out of Federal ownership without mineral reservation and will not be restored to surface entry, mining or mineral leasing. As such, this revocation is for record clearing only." It became effective July 25, 1983.

(2) In Oregon, PLO 6089 revoked a withdrawal covering 160 acres of land that had been withdrawn as a powersite reserve but had thereafter been transferred to private ownership. This revocation became effective on November 23, 1981. Also in Oregon, PLO 6512 revoked a Sec-

retarial order as to 2,998 acres of public lands that "have been conveyed out of Federal ownership and will not be restored to surface entry mining or mineral leasing." The revocation became effective on February 4, 1984.

(3) In California, PLO 6394 revoked four powersite reserves affecting 6,118 acres, all of which "remain withdrawn from disposition under the public land laws for the protection of the City of Los Angeles watershed by the Act of Congress dated March 4, 1931, or by Executive Order No. 6206 of July 16, 1933." This record clearing revocation was completed on June 28, 1983.

(4) In Wyoming, PLO 6397 revoked a withdrawal covering 25,402 acres and all but 600 were "subject to other overlapping withdrawals and, as such, will not be open to mining locations." The revocation became effective on June 28, 1983.

(5) In the State of Washington, PLO 6161 revoked a Secretarial order involving 158 acres but "the lands will not be restored to operation of the public land laws because they remain withdrawn for the Dungeness National Wildlife Refuge." The revocation became effective October 18, 1982. Also in Washington State, PLO 5815 revoked a withdrawal affecting 0.95 acres of land which, after the revocation, remain segregated from the public land laws and mining laws because of a "Recreation and Public Purposes Act classification WA 03675." The revocation became effective on January 22, 1981.

(6) In Montana, PLO 5854 revoked a withdrawal involving 120 acres which had previously

"been patented to the [Montana] State Fish and Game Commission." The revocation became effective on January 27, 1981.

(7) Finally, in Arizona, PLO 5976 revoked a withdrawal involving 1,199,267 acres of land in Arizona of which 1,009,610 acres had been conveyed into private ownership or were contained within other withdrawals. Thus, the land remained closed to all forms of appropriation following revocation. Revocation became effective on August 5, 1981.

The foregoing examples of revocations falling within Category C, that is, for mere record clearing, are not meant to be all inclusive. They are only random, representative examples of the type of revocations made solely for record clearing purposes.

D. Revocations that were undertaken by BLM on its own initiative are discussed below.

(1) In Arizona, five withdrawals were revoked. Executive Order 5339 withdrew 1,199,627 acres of land in Arizona in aid of legislation pending determination as to the advisability of including the lands in a national monument. Following congressional action creating the national monument, 189,657 acres remained outside of the Congressionally designated monument area. In light of the fact that this acreage was no longer needed, because Congress had acted, the withdrawal was revoked by PLO 5976. The lands had never been closed to metalliferous mining and mineral leasing. Of the remaining four withdrawals in this category that were revoked in Arizona, one (PLO 6156) covered land previously *not* closed to mining and/or mineral leasing.

The three remaining withdrawals that were revoked had only closed the lands involved to non-metalliferous mining; the lands had always been open to metalliferous mining and mineral leasing. Thus, none of the lands involved on these five withdrawals were restored to both all forms of mining or mineral leasing in Arizona as a result of the withdrawals revoked in this category.

(2) Of the ten revocations in the State of Utah which fall within this category, eight revoked withdrawals that had never closed the land to metalliferous mining or mineral leasing. The revocations opened the lands to nonmetalliferous mining only. The ninth revocation (PLO 6075) did not open the lands to any type of mining or mineral activity but only to sales and exchanges. Only one of the ten revocations in Utah (PLO 5849) restored the lands to both mining and mineral leasing and it involved only 160 acres.

(3) In Colorado, three revocations fall within this category. Two of them (PLOs 6164 and 6218) involve withdrawals which had never removed the land from the operation of mining and mineral leasing laws, while the third (PLO 6549) involved lands that had always been opened to mineral leasing and metalliferous mining. It only restored 40 acres of the land to non-metalliferous mining.

(4) In Nevada, seven revocations fall within this category. Of them, two (PLOs 6524 and 5899) involve lands that had never been closed to mining or mineral leasing. Two others (PLO 6108 and 6081) involved lands that had always remained open to metalliferous mining and mineral leasing and only restored the lands to

nonmetalliferous mining. A fifth (PLO 6472) involving 20 acres, restored lands to mining; the land had always been open to mineral leasing. The remaining two PLO's in Nevada in this category revoked withdrawals which "temporarily withdrew . . . lands considered valuable for oil shale" (PLO's 5917 and 6308). Of these two, one (PLO 6308) involved land that had always been open to metalliferous mining and oil and gas, sodium, and geothermal leasing. The other (PLO 5917) did not open the lands to mining or mineral leasing.

(5) In Montana, no revocations occurred which fall within this category.

(6) In the State of Washington, the eight revocations within this category did not open any new land to mining or mineral leasing activities. Five of the withdrawals that were revoked involved land that had never been closed to any mining or mineral leasing activities and three involved lands that had been closed only to non-metalliferous mining.

(7) In New Mexico, 15 revocations were made which fall either in whole or in part within into Category D. None restored lands to both all forms of mining or mineral leasing activity. Of the 14, eight restored lands only to nonmetalliferous mining, lands which had always been open to metalliferous mining and mineral leasing. The others involved lands that had always been open to both forms of mining and mineral leasing.

(8) In Wyoming, 14 revocations were made which fall within Category D. Four revocations (PLOs 6059, 6140, 6036 and 5862) involved lands

that had never been closed to mining or mineral leasing and thus did not open the lands to any new mining or mineral leasing activities. Five PLOs (6043, 6053, 5950, 6377, and 6455) involved lands that had always been open to metalliferous mining and mineral leasing. The PLOs reopened the lands to nonmetalliferous mining. Two of the PLOs (6114 and 6220) involved lands always open to mineral leasing but restored lands to mining. Three revocations (PLO 6123, 6186, and 6157) did reopen lands to mining and mineral leasing. However, out of the total of 96,963 withdrawn acres revoked in this category in Wyoming, the three revocations which reopened lands to mining and mineral leasing comprised only 396 acres.

(9) In California, 21 revocations were effected within this category. Of them, four PLOs (6432, 6376, 6358 and 6153) involved lands that had never been closed to mineral leasing or mining activities. Four revocations (PLO 6336, 6058, 6015 and 5830) involved lands that had always been open to mineral leasing activities, but were reopened to mining activities. Two PLOs (6068 and 5942) involved lands that were always open to mineral leasing but remain closed to mining activities. The remaining 11 revocations in California involved lands that had always been open to mineral leasing and metalliferous mining, but were reopened to nonmetalliferous mining. Thus, of the 21 revocations in California, none restored lands to both mining and mineral leasing.

(10) Nearly half of all revocations in Category D were completed in the State of Oregon.

Ninety revocations covering 55,290 acres were undertaken by BLM on its own initiative in Oregon. Of these, 33 involved lands that had always been open to mining and mineral leasing, 40 revocations involved lands that had always been open to mineral leasing and metalliferous mining, with the revocation merely reopening the land to nonmetalliferous mining. Twelve revocations involved land that had always been open to mineral leasing, but reopened the land to mining. Five revocations involving 562 acres opened the lands to both mining and mineral leasing.

(11) In Idaho, 18 revocations fell within Category D. Of these, 12 involved lands that had always been open to mining and mineral leasing. Three involved lands that had always been open to mineral leasing and metalliferous mining, and only restored lands to nonmetalliferous mining. Two involved lands restored to mining, lands that had previously been opened to mineral leasing. Only one revocation, involving 84 acres, restored land to both mining and mineral leasing.

(12) In Alaska (which is not included within the mandate of FLPMA § 204(1), one PLO was issued, revoking over 5.5 million acres which restored the land to a variety of uses.

12. In sum, of the 647 revocations that were completed since January 1, 1981, covering 18,991,920 acres, 266 of these revocations, covering 1,826,507 acres, were revoked in the ordinary course of business. An additional 211 revocations covering 4,844,853 acres were merely record clearing transactions. Of the remaining 170 revocations, involving 12,320,560 acres, only 10 revocations in the lower 48 States involving 1,201 acres restored land to both all forms of mining and mineral leasing.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

/s/ VINCENT J. HECKER
Vincent J. Hecker

Sept. 5, 1986
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, DONALD P. HODEL, AND THE UNITED
STATES DEPARTMENT OF THE INTERIOR, DEFENDANT

DECLARATION NO. 3 OF VINCENT J. HECKER

I. INTRODUCTION

1. I, Vincent J. Hecker, Chief, Division of Lands, of the Bureau of Land Management (BLM), United States Department of the Interior, hereby declare under penalty of perjury that the information contained in this declaration is true and accurate to the best of my knowledge. Some of the details in this declaration have been supplied by my subordinates or other sources within BLM.

2. Land classifications are similar to withdrawals in that they both segregate the land from the operation of a particular law and reserve and/or dedicate the lands for a specific use or uses. They differ both in their origin and how they are effectuated. Withdrawals can only be made at the Secretarial level while the authority to make classifications has been delegated to State Directors who in turn can delegate that authority to the district managers. It was also in these offices that BLM has been undertaking land use planning since the 1960's. By 1981, the land use planning process had implemented the requirements of

section 202 of FLPMA and the Bureau's 1979 planning regulations. Thus, the terminations were not made in isolation vis-a-vis the land use planning process but were made in the context of that process.

3. Authority to classify the public lands and to provide for their orderly disposal or retention originated with the passage of the Taylor Grazing Act of 1934. The Taylor Grazing Act authorized the Secretary of the Interior (Secretary), in his discretion, to establish grazing districts or additions thereto and/or modifications and identify vacant, unappropriated, unreserved public domain lands which were chiefly valuable for grazing and raising forage crops, or more suitable for sale, entry, or exchange. Once a grazing district was established under the Act, all forms of entry and settlement except location under the Mining Law of 1872 within the exterior boundaries of the grazing district were barred until the land was classified under Section 7 of the Taylor Grazing Act.

4. In 1936, section 7 of the Taylor Grazing Act was amended to include within the Act's scope lands which were withdrawn by Executive Orders 6910 and 6964 and incorporated the original grazing districts established pursuant to the Taylor Grazing Act. As amended, section 7 provided that all lands (virtually all the remaining vacant, unreserved and unappropriated public domain lands outside of Alaska) covered by the Act should not be subject to disposition sale or location except under the Mining Law of 1872 unless, and until, the lands were classified and opened to disposal.

5. In 1964, Congress passed the Classification and Multiple Use Act (C&MU Act), 78 Stat. 986, which provided temporary authority to the Secretary to review and classify lands for retention for interim, multiple use management, and to dispose of land meeting certain criteria. This Act expired in 1970. Hence, a new concept

of retention, albeit temporary, or interim, was introduced in relation to management of the nation's public lands. BLM thereafter began the implementation of the review and classification actions contemplated by the C&MU Act. A report published in June of 1970 recognized that BLM had acted under a congressional mandate to make their determinations as soon as possible due to the temporary duration of the Act. See *One Third of the Nation's Land, A Report to the President and the Congress*, at p. 53. Exhibit 2 to Edwards' IC affidavit.

6. A number of statutes authorized the Secretary to dispose and/or use the public lands, e.g., the Small Tract Act, the Isolated Tract Act (Revised Statute 2455), the Recreation and Public Purposes Act (R&PP Act), the Homestead Act, Section 8 of the Taylor Grazing Act, the Mining Law of 1872, Mineral Leasing Act, and the Desert Land Act. Withdrawals segregated the lands from the effect of some or all of these public land and mineral laws. All these statutes except the Desert Land Act, the R&PP Act, and the Mining Law of 1872 were repealed by FLPMA in 1976. A review of some of those statutes follows:

A. The Small Tract Act, 43 U.S.C. 682a (1964 Ed.) was enacted in 1938 and authorized the Secretary to classify lands chiefly valuable for recreation, residential, business or community purposes and to sell or lease such lands at his discretion for up to five acre tracts to eligible individuals and organizations meeting the Act's requirements. The Small Tract Act was repealed by section 703 of FLPMA.

B. The Isolated Tract Act, 43 U.S.C. 1171, (Revised Statute 2455) was originally enacted in 1895 and was amended on several occasions. It authorized the Secretary to sell tracts of isolated or disconnected

public domain lands not exceeding 1,520 acres at public auction to the highest bidder. The Act also authorized the Secretary to sell lands too rough or mountainous for cultivation, not to exceed 760 acres, to the highest bidder, even if such tracts were not disconnected or isolated within the meaning of the Act. The Isolated Tract Act was repealed by section 702 of FLPMA.

C. Section 8 of the Taylor Grazing Act, 43 U.S.C. § 315(q) authorized the Secretary of the Interior to accept title to privately owned or state lands within or outside the boundaries of a grazing district. Upon receipt of such land and in exchange thereof, the Secretary was authorized to issue a patent to lands located within a surveyed grazing district or unreserved surveyed public land equal to, but not in excess of, the acreage of the lands received. However, states were prohibited from selecting lands within a grazing district unless the lands being offered by the state were within a grazing district. Nonetheless, once a state made an application for an exchange under the Act, BLM was required to "proceed with [the] exchange at the earliest possible date and to cooperate fully with the state. . . ." 43 U.S.C. § 315(g)(c). Hence, in order to prevent such exchanges, BLM classified land for multiple use management and segregated them from the operation of section 8 of the Taylor Grazing Act. Section 8 was repealed by FLPMA. Section 705.

D. The Public Land Sale Act of 1964, 48 U.S.C. §§ 1921-27, gave the Secretary temporary authority to sell lands classified for disposal which were found chiefly valuable for (a) the orderly growth and development of a community, or (b) needed for commercial, agricultural (excluding lands capable of raising

forage crops and grazing) or industrial use. The size of a tract could not exceed 5,180 acres and had to be sold through competitive bidding at not less than the appraised fair market value. The Public Land Sales Act expired by its own terms on June 30, 1969.

E. The Desert Land Act of 1877 (DLE), 43 U.S.C. 321, *et seq.*, as amended, was designed to promote the reclamation, by irrigation, of the arid and semi-arid public lands of the west. The Act authorized the Secretary to accept declarations from individuals intending to reclaim tracts of desert land not in excess of 320 acres. Upon allowance, entrymen were given four years to make proof of reclamation to receive patents. Before entries were permitted, the Secretary had to determine that the lands were incapable of producing any agricultural crops without irrigation. The DLE was not repealed by FLPMA and remains in effect. Currently, only Idaho and Nevada have significant numbers of DLE applications. Moreover, of the applications received, less than 1% of the lands involved have been found suitable for entry.

F. The Recreation and Public Purposes Act of 1926, as amended, authorized the Secretary to classify lands for disposal to states, counties, territories, municipalities, their political subdivisions, and non-profit organizations for any recreational or public purposes. If no application was received by BLM within 18 months after the issuance of the classification notice, the segregative effect of the R&PP classification was automatically vacated and the public lands returned to their former status. See 43 C.F.R. § 2741.6. The R&PP Act was not repealed by FLPMA.

G. 25 U.S.C. § 339, as amended, commonly referred to as the Indian General Allotment Act, was

originally enacted in 1887. This Act permits Indians or Tribes not living within the boundaries of a reservation to settle upon unappropriated public land and apply for a patent to such lands in the same quantity and manner as provided for Indians residing upon reservation by the Act of February 8, 1887, ch. 119, § 1. 84 Stat. 388, as amended. This act was nondiscretionary in that BLM was required to convey patents to qualified applicants. The Indian General Allotment Act was not repealed by FLPMA.

H. The Homestead Act, 43 U.S.C. (6), *et seq.*, permitted citizens of the United States to enter in good faith not more than one-quarter section (160 acres) of unappropriated public land and file an application to receive a patent if the entry was made for the purpose of settlement and cultivation. To prevent alienation of the government's title, BLM classified millions of acres of land against appropriation under the Homestead Act. This Act was repealed by Section 702 of FLPMA.

7. By 1976, BLM had classified approximately 180,000,000 acres of lands under a variety of statutes. The vast majority of classifications were made pursuant to the C&MU Act (over 177,000,000 acres). Many of these lands were classified for retention to allow Congress an opportunity to determine how the public lands were to be utilized. When FLPMA was enacted, it provided that public lands were to be retained in Federal ownership and managed for multiple use and sustained yield unless it was determined that disposal of such lands was in the national interest. FLPMA made the C&MU retention classifications obsolete and unnecessary. Termination of these types of classifications are hereinafter referred to as Criterion A terminations.

8. One of the objectives of FLPMA was to "[w]eed out of the body of law those statutes and parts of statutes which are obsolete." See H.R. Rep. No. 1163, 94th Cong. 2d Sess. 2 (1976). At the time FLPMA was enacted, over 3,000 public land laws existed. FLPMA repealed either entirely or a portion of 253 public land laws relating to homesteads, agricultural entry, small tracts, drainage, military abandonment and sales and disposals. Approximately 125,000,000 acres of the public lands were classified or segregated against laws which no longer exist. Terminations that ended these types of classifications are hereinafter referred to as Criterion B terminations.

9. After FLPMA was enacted, BLM developed more sophisticated land use planning techniques which, *inter alia*, took into account the need to retain lands in Federal ownership and to prevent unwarranted applications under the remaining land disposal laws. Such action rendered the old classifications unnecessary. Hence, classifications that segregated against the operation of one or more public land disposal laws and where a land use plan was completed, were terminated. Terminations that ended these types of classifications are hereinafter referred to as Criterion C terminations.

10. Some classifications had segregated land against the operation of the mining laws. In many instances, such lands had only nominal mineral value and no serious interests had ever been expressed regarding mining. Prior to being segregated, these lands had always been open to mining, but very few claims, if any, had been located, and even fewer acres were ever actually disturbed. A few classifications that segregated public lands against mining where the lands contained only nominal mineral value and where no serious interest for mining existed were terminated. Termination that ended these types of classifications are hereinafter referred to as Criterion D terminations.

11. The four criteria described above, were developed by the Bureau in the late 1970's and 1980. They were defined as criteria to be used by the Bureau Field Offices in terminating classifications and were given as written instructions by the Washington office to its state offices in OAD 81-11 issued in 1981. See Exhibit 8 to Edwards' 1C Affidavit. These criteria were later restated in BLM Manual 2355. See Exhibit 21 to Edwards' 1B Affidavit. Both OAD 81-11 and the BLM Manual 2355 stated that classifications may be terminated if they met any of the four criteria noted—above namely, lands had been classified for retention only (Criterion A), the statutes against which the classifications had segregated the lands had been repealed (Criterion B), the lands had been segregated against discretionary land laws and a land use plan was in place (Criterion C), and lands had been segregated from mining and where there was only nominal mineral value and no serious interest had been expressed with regard to mining activities. (Criterion D).

12. In employing these criteria, the Bureau has terminated 617 classifications covering 153,975,381 acres since January 1, 1981. Nearly 7,000,000 acres, following the review thereof, were not terminated and/or modified but were retained. See Edwards' 1C Affidavit at ¶ 19. I am unaware of any classifications that were terminated that restored land to uses that are inconsistent with approved land use plans in effect at the time the classification was terminated or subsequently developed. The totals by the criteria identified above are as follows:¹

¹ The classification order totals reflected herein have been calculated on the following basis: if they were terminated using more than one criterion, they have been counted only once and only in the criterion where the greatest amount of acreage appears.

A. Criterion A—Two classifications were terminated covering a total of 5,264 acres. They were both in the State of Arizona.

B. Criterion B—The vast majority of the terminations, both in number of classifications terminated and the acreage involved fall within this category. Of the total 617 classifications terminated, 516 are within this category (laws repealed by Congress). Of the 155,975,381 acres on which classifications had been terminated, 118,775,142 are within this category.

C. Criterion C—Sixty-seven classification orders were terminated in this category which covered a total of 2,359,820 acres.

D. Criterion D—Twenty-four classifications were terminated in this category covering a total of 210,155 acres. See Exhibits 1-12.²

13. The individual terminations by state within each of these criteria are attached as exhibits 2-12 to this declaration. The fact that classifications were terminated in criterion A, B or D does not mean that no land use plan had been completed or were in place at the time of the termination. The breakdown only indicates the specific criteria employed by the BLM in terminating the classification by the criteria set forth and described above.

14. An analysis of the terminations by criterion in each state is as follows:

A. In Criterion A, only two classifications were terminated as noted in ¶ 12A, *supra*. Both of these

² The figures in Exhibits 1-12 were derived from the Classification Orders and supporting case files of the BLM. Every effort has been made to make them as correct as possible. However, we are continuing to review these statistics and, if necessary, we will file an errata sheet showing any corrections that are made in view of our ongoing review.

classifications were in Arizona and covered 5,264 acres. These lands had been classified for retention and multiple use management. They segregated the lands from all forms of appropriation, including the Mining and Mineral Leasing Laws. Section 102 of FLPMA mandates that all public lands be retained and managed for multiple use and sustained yield. Thus, these retention classifications became superfluous as they had been replaced by Section 102(a)(1) of FLPMA. Therefore, termination of these two classifications was completed.

B. In Criterion B, a total of 516 classifications covering 118,775,142 acres were terminated. The following is a state-by-state breakdown and description of the effects of Criterion B terminations for each state. The rationale behind Criterion B terminations was that the classifications segregated the land from the effect of laws which FLPMA subsequently repealed. Hence, the classification became superfluous. For example, many classifications segregated lands from appropriation under the Homestead laws. Thereafter, Congress repealed the Homestead laws. Thus, the classifications had been rendered moot by Congress.

(1) *Arizona*—26 classification orders on 10,484,587 acres were terminated since January 1, 1981. These classifications segregated the lands from appropriation under the agricultural entry laws (or used in his declaration [*sic*], to "agricultural entry laws, refers to the Homestead Acts, the Indian General Allotment Act, and to Desert Land Act), sales under RS 2455 and the Public Land Sales Act of 1964. However, the lands had remained open during the term of the

classifications to all other public land laws including the mining and mineral leasing laws. FLPMA repealed all the aforementioned laws with the exception of the Desert Land Act, making the classifications superfluous.

(2) *Montana*—31 classification orders on 5,194,094 acres were terminated since January 1, 1981. These classifications primarily segregated the lands from appropriation under the agricultural entry laws, sales under RS 2455, and the Public Land Sales Act of 1964. The lands had remained open to appropriation under all remaining public land laws including the mining and mineral leasing laws. FLPMA repealed the authorities against which the lands had been classified, thus making the classifications totally unnecessary. Hence, they were terminated.

(3) *California*—206 classification orders on 165,435 acres were terminated since January 1, 1981. 52,232 acres of the total had been classified for disposal under the Small Tract Act and the remainder had been classified for disposal under RS 2455. FLPMA repealed RS 2455 and the Small Tract Act and, hence, the classifications became moot.

(4) *Washington*—3 classification orders on 1,418 acres of lands were terminated since January 1, 1981. These lands were classified for lease or sale for home site purposes under the Small Tract Act. When the Small Tract Act was repealed by FLPMA, making the classification no longer applicable, the classifications were terminated.

(5) *Wyoming*—20 classification orders on 12,698,007 acres of land were terminated. Two

classifications segregated 4,743 acres from appropriation under all the public land laws including the Mining Law but not the Mineral Leasing Act, and were designated for exchange under section 8 of the Taylor Grazing Act. However, Section 8 was repealed when FLPMA was passed, thus making these classifications moot. Four classification orders on 180 acres were classified for disposal under the Small Tract Act. The Small Tract Act was also repealed by FLPMA, thus making these classifications moot. The remaining 14 classifications were made under the C&MU Act classified the lands for multiple use management and classified them for appropriation under the agricultural land laws and from sales under RS 2455. For the laws that were repealed by FLPMA, these classifications had become moot.

(6) *New Mexico*—11 classification orders on 8,744,336 acres were terminated since January 1, 1981. These classifications segregated the lands from appropriation under RS 2455 and agricultural entry laws but not from the mining and mineral leasing laws. For the laws that were repealed by FLPMA, these classifications had become moot.

(7) *Utah*—25 classification orders on 22,837,632 acres were terminated since January 1, 1981. These lands had been classified for multiple use management and segregated from appropriation under the agricultural entry laws, and sales under RS 2455. In addition to being segregated from the agricultural entry laws and sales under RS 2455, some orders also segregated the lands from exchanges under section 8 of the

Taylor Grazing Act. For the laws that were repealed by FLPMA, these classifications became moot.

(8) *Colorado*—32 R&PP classification orders totalling 6,503,885 acres were terminated since January 1, 1981. Under the terms of the classifications, the lands were only opened to appropriation under the Mineral Leasing Act and for disposal under the R&PP Act. Since no applications to obtain these lands were received within 18 months of the date the lands were classified by a qualified applicant, the classifications were automatically vacated. Subsequent termination of these classifications was appropriate since no application could be accepted upon expiration of the 18-month deadline.

(9) *Idaho*—23 classification orders totalling 5,093,369 acres were terminated since January 1, 1981. 22 classification orders on 5,076,215 acres were segregated from the agricultural entry laws and sales under RS 2455. One classification on 17,154 acres was terminated which, in addition to segregating the lands from agricultural entry and sales, also classified the land for sale under the Public Sale Act of 1964 and exchanges under section 8 of the Taylor Grazing Act. All of the aforementioned lands were classified for multiple use management and were not segregated from any other public land laws, including the Mining and Mineral Leasing Law. For the laws FLPMA repealed, these classifications became moot.

(10) *Oregon*—54 classification orders on 9,309,559 acres were terminated since January 1, 1981. These classifications segregated the lands

from appropriation under the agricultural entry laws and sales under RS 2455. The lands were classified for multiple use management and subject to appropriation under all remaining public land laws, including the Mining and Mineral Leasing Laws. Again, for the laws FLPMA repealed, these classifications became moot.

(11) *Nevada*—85 classification orders on 37,742,820 acres were terminated since January 1, 1981. 44 orders had classified 68,166 acres for disposal under the Small Tract Act. 18 orders classified 5,952 acres for exchange under Section 8 of the Taylor Grazing Act. Six orders classified 438 acres for disposal under the Public Land Sales Act and one order classified 48 acres for sale under RS 2455. The aforementioned classifications segregated the lands from all forms of appropriation under the public land laws with the exception of the Mineral Leasing Law. The remaining orders classified land for retention and multiple use management and segregated them from agriculture entry and sales under RS 2455 but kept them open to all other forms of appropriation including the Mining and Mineral Leasing Laws. For the laws FLPMA repealed, these classifications became moot.

C. With regard to classifications terminated pursuant to Criterion C, 67 classifications covering 2,359,820 acres have been terminated since January 1, 1981. These classifications were terminated because they segregated the lands from the operation of the discretionary public land laws and termination was consistent with an approved land use plan. Exhibits 2-13 list the terminations in Criteria C for each State.

The following state-by-state breakdown is not meant to be inclusive, but is intended to illustrate the typical effect of terminating classifications which segregated the land from the operation of one or more discretionary land laws with an approved land use plan in place.

(1) *Arizona*—Four classifications on 41,613 acres were terminated since January 1, 1981. For example, A-5882 terminated a classification covering 14,281 acres which had segregated the lands from all forms of appropriation including mining and mineral leasing. These lands were classified for transfer out of federal ownership under Arizona state indemnity in-lieu selection rights.

A-4184 also segregated the land from all forms of appropriation including mining and mineral leasing and classified the lands for transfer from federal ownership under Arizona state indemnity in-lieu selection rights.

(2) *California*—Forty-two classifications covering 2,242,045 acres were terminated since January 1, 1981. For example, R-697 segregated 473,964 acres from appropriation under the agricultural entry laws and sales under RS 2455. These lands were open to all other forms of appropriation and were classified for multiple use management under the Classification and Multiple Use Act. In addition, 3,810 acres were also segregated from mining but remained open to mineral leasing.

S-2577 segregated 2,920 acres for appropriation under the agricultural land laws and sales under RS 2455. In addition, 3,680 acres were

segregated from mining but remained open to mineral leasing. These lands were also classified for multiple use management and were subject to appropriation under the remaining public land laws.

S-965 segregated 169,166 acres from appropriation under the agricultural land laws and sales under RS 2455. In addition, 1,599 acres were segregated from mining but remained open to mineral leasing. These lands were classified for multiple use management and were subject to appropriation under the remaining public land laws.

R-2821 segregated 178,726 acres from appropriation under the agricultural land laws and sales under RS 2455. This was a partial termination of a classification which retained the segregation from mining on 11,341 acres. The partial termination was done because these lands which were closed to mining were located throughout several sites and used primarily for recreation; Westwell Archaeological site, Whipple Mountain Recreation and Natural Area, and the Picacho Recreation and Wildlife Area. The segregative effect against mining on the 11,341 acres were retained until a withdrawal application can be processed.

R-1390 segregated 223,397 acres from appropriation under the agricultural land laws and sales under RS 2455. It also segregated 13,556 acres from mining but remained open to mineral leasing. However, 9,216 acres remained closed to mining because these lands were located throughout several sites and used for recreational pur-

poses; Mecca Hills Recreation Area and the Coyote Spring Wildlife Area.

In those examples and in every classification terminated in California, a land use plan covering the lands was in place.

(3) *Idaho*—One part of a classification (listed under Criterion B) covering 205 acres was terminated since January 1, 1981. These lands were classified for exchange under Section 8 of the Taylor Grazing Act, for lease or sale under the R&PP Act, sales under RS 2455 and sale under the Unintentional Trespass Act. These lands were segregated from all other forms of appropriation including the mining and mineral leasing law.

(4) *Montana*—Three classifications covering 10,484 acres were terminated since January 1, 1981. For example, M-10577 terminated a classification covering 520 acres which segregated the lands from appropriation under the agricultural land laws and sales under RS 2455. The lands were classified for multiple use management.

M-15352 terminated classifications covering 1,382 acres which segregated the lands from appropriation under the agricultural land laws and sales under RS 2455. In addition, the lands were also segregated from lease or sale under the R&PP Act. These lands were also classified for multiple use management.

(5) *Oregon*—Nine classifications covering 465 acres were terminated since January 1, 1981. For example, OR-09913 segregated 134 acres from all forms of appropriation under the public land laws, except for lease and sale under the

R&PP Act. These lands were classified for recreation and public purposes.

OR-6113 segregated 72 acres from all forms of appropriation under the public land laws, including mining and mineral leasing, except sales and leases under the R&PP Act. These lands were classified for recreation and public purposes.

(6) *Nevada*—Seven classifications covering 36,313 acres were terminated since January 1, 1981. For example, N-1005A classified 31,260 acres for multiple use management. 13,940 acres were segregated from all forms of appropriation, except disposals under the R&PP Act. These lands were closed to mining, but remained open to mineral leasing. 17,323 acres were segregated from disposal under the public land laws but remained subject to appropriation of the R&PP Act and the mining and mineral leasing law.

N-892A classified 2,250 acres for multiple use management. 1,610 acres were segregated from disposal under all public land laws except the R&PP Act and the mineral leasing law. These lands were also closed to mining. 640 acres were segregated from all forms of appropriation under public land laws except for disposals under the R&PP Act and mining and mineral leasing laws.

N-045724 classified 80 acres for disposal under the Desert Land Entry Act, but these lands remained subject to all forms of appropriation, including the mining and mineral leasing laws.

(7) *Washington*—Two classifications covering 28,695 acres were terminated since January 1, 1981. These lands were classified for multiple use

management and were segregated from agricultural entry and sales under RS 2455. They remained open to all other forms of appropriation, including the mining and mineral leasing law.

No classifications in Criterion C were terminated in Colorado, New Mexico, Utah and Wyoming.

D. Using Criteria D, 24 classifications covering 210,155 acres were terminated since January 1, 1981. The terminations using Criterion D involved classifications that had segregated lands of nominal mineral value from entry under the mining laws. As stated earlier, little interest was expressed to have these lands open to mineral development.

Exhibits 2-12 identifies terminations using criterion D for each state. The following individual state-by-state breakdowns highlights these terminations.

(1) *Arizona*—One classification covering 8,219 acres was terminated since January 1, 1981. A-1351 terminated a multiple use classification which prevented appropriation under both the mining and mineral leasing laws.

(2) *Colorado*—Parts of 6 classifications (listed in Criterion B), covering 2,679 acres were terminated since January 1, 1981. For example, C-3357 terminated a multiple use classification on 1,653 acres. This land was segregated from appropriation under the mining law, but remained open to mineral leasing.

(3) *Montana*—Three classifications covering 43,666 acres were terminated since January 1, 1981. For example, M-7991 terminated a classification on 14,271 acres which were classified for multiple use management and segregated from

mining but open to location under the mineral leasing law.

(4) *Oregon*—One classification covering 2,370 acres was terminated since January 1, 1981. OR-437 terminated a multiple use classification on 19,271 acres which were classified for multiple use management and segregated from mining. However, these lands were never closed to mineral leasing and were subject to appropriation under that law.

(5) *Utah*—Parts of six classifications (listed in Criterion B), covering 132,343 acres were terminated since January 1, 1981. U-2923 terminated 151 acres of a multiple use classification which segregated the land from mining, but not mineral leasing. U-8131 terminated 2,550 acres of a multiple use classification which closed the lands to mining but not mineral leasing. U-6047 terminated 242 acres of a multiple use classification which closed the lands to mining but not mineral leasing.

(6) *Washington*—Seven classifications covering 7,702 acres were terminated since January 1, 1981. OR-5430 terminated 5,099 acres of a disposal classification which designated these lands for disposal under Section 8 of the Taylor Grazing Act, the Public Land Sale Act of 1964, sales under RS-2455, and sale and lease under the R&PP Act. This classification segregated the land from the operation of the mining law, but did not segregate them from appropriation under the mineral leasing law. OR-6353 terminated 1,274 acres of a disposal classification which designated these lands for disposal through exchange under Section 8 of the Taylor Grazing

Act. This classification segregated the land from all other forms of appropriation, including the mining law. They were, however, subject to appropriation under the mineral leasing law.

(7) *Wyoming*—Twelve classifications covering 13,176 acres were terminated since January 1, 1981. For example, W-022567 terminated 5,614 acres of a multiple use classification which had closed the lands to mining but not mineral leasing. Similarly, W-0200621 terminated 4,197 acres of a multiple use classification which closed the lands to mining but not to mineral leasing. W-0304203 terminated R&PP Act classification which closed the lands to all forms of appropriation, including mining and mineral leasing.

California, Idaho, New Mexico, and Nevada had no terminations using Criterion D.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Sept. 5, 1986

Date

/s/ VINCENT J. HECKER

Vincent J. Hecker

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 85-2238

NATIONAL WILDLIFE FEDERATION, PLAINTIFF

v.

ROBERT F. BURFORD, DONALD P. HODEL, AND THE UNITED
STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS

DECLARATION OF DAVID C. WILLIAMS

1. I, DAVID C. WILLIAMS, Chief, Division of Planning and Environmental Coordination, Bureau of Land Management (BLM), United States Department of the Interior, Washington, D.C., hereby declare under penalty of perjury that the information contained in this affidavit is true and accurate to the best of my knowledge. Some of the details in this declaration have been supplied by BLM planning specialists and other sources within BLM.

2. The purpose of this declaration is to describe briefly: (1) the history of formal land use planning for the BLM-managed public lands; (2) the types of land use plans that have been—and are being—used by BLM; and (3) how these plans relate to the planning principles of section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1712.

HISTORY

3. Throughout the two hundred year history of the Nation's public lands, the dominant policy of the United States toward those lands has been one of disposal out of

federal ownership and into state or private control. Only within the last twenty years or so has there emerged a firm policy of retention and disposal. This shift in policy has resulted in a multiple use management—planning philosophy with respect to the public lands remaining in BLM's custody.

4. Formal land use planning was first introduced within BLM during the 1960's. Planning was focused on program activities at the BLM district level.¹ Functional land use development plans covering each major land use program (e.g., livestock grazing, wildlife habitat, recreation, timber, minerals) were called for. However, these plans did not produce a coordinated, long-range, multiple-use management framework for decisionmaking. To remedy this, a new planning system, centered on smaller "planning units", was introduced. The plans developed out of this new system were called Management Framework Plans (MFPs).

5. Work on the first MFPs was started in 1969. Five prototype plans were developed and, from the lessons learned in this experimental process, coupled with experience gained during subsequently developed MFPs, extensive revisions in the planning system were implemented in 1975 through the BLM manual. The revisions served to strengthen the relationships between planning decisions and the analysis of resource information including environmental concerns and social-economic data. Many of the MFPs in use today were prepared using this 1975 manualized guidance. By 1979, approximately 80 percent of the

¹ BLM management activities have been implemented largely through a basic administrative subdivision called the resource area. Two or more such areas comprise a district, and within each of the western states there are a number of BLM districts. The districts in each state are supervised by a BLM State Director.

BLM-managed lands in the contiguous western states had been included in MFPs.

6. The BLM planning system, as it evolved in the late 1960's and early 1970's was not driven by statute. BLM recognized the need for planning to resolve land use conflicts and to allocate limited resources. Without statutory requirement, BLM developed the MFP process to meet those needs. BLM received funding for, and thus implicit approval of, the MFPs from the Congress.

7. In section 202 of FLPMA, Congress specified by statute for the first time a number of planning principles to be observed by BLM in the development and revision of its land use plans. Moreover, existing MFPs were to be reviewed to ensure that each plan complied with the principles prescribed in section 202. Also, Interior was directed to issue regulations affording to the public opportunities for participation in the planning process.

8. Early in 1977, work was commenced to implement rulemaking for section 202. Discussion packages containing draft regulations were made available to the public and a *Federal Register* notice of intent to propose rulemaking was published in March of 1978. 43 C.F.R. 8814 (March 3, 1978). Comments on the draft regulations were received from 130 sources. In December of 1978 proposed rulemaking was published. 43 F.R. 58764 (December 15, 1978). Again, numerous comments and suggestions were received. On September 6, 1979, the final rules took effect. 44 F.R. 46386 (August 7, 1979). As adopted, the rules:

- introduced a revamped planning system, incorporating the principles prescribed by section 202 of FLPMA;
- called for Resource Management Plans (RMPs), keyed to BLM resource areas and designed to even-

tually replace the MFPs over an indeterminate period of time designated as the "transition period";

- preserved MFPs until superseded by RMPs, but only if the MFPs complied with the "principles of multiple use and sustained yield and shall have been developed with public participation and governmental coordination. . . ." 43 C.F.R. 1601.8(b)(1) (1979).

The purpose of section 1601.8(b)(1), which in 1983 was renumbered as 1610.8(a)(1),² is to secure MFP compliance during the transition period with the statutory requirements for BLM land use plans as mandated by section 202 of FLPMA. Thus, each MFP must be considered separately to determine its validity in relation to section 202 planning principles.

9. In October of 1979, six pilot RMP planning projects were inaugurated under the new BLM regulations. These projects were used to gain practical experience in operating under the regulations and to translate this experience into a bureau-wide implementation strategy. On the strength of this experience, 21 RMPs were started in the fall of 1980. To date, about 70 RMPs, out of an expected total of from 140 to 150 RMPs have been started, and 25 RMPs have been approved and are in operation. The average planning area covers approximately 1,000,000 acres of public land. BLM requires about two and one-half to three years of interdisciplinary effort to produce an RMP at a cost of about \$450,000. In some cases, plans have exceeded \$1,000,000 in cost. BLM's annual budget expenditures for land use planning dropped from a Fiscal Year 1981 high of almost \$15,000,000 to \$9,047,000 in Fiscal Year 1986. Because of the budget cutbacks and expected future reductions, the availability of skilled special-

²48 F.R. 20364, 20375 (May 5, 1983).

ists needed to prepare the plans has been substantially curtailed. It is estimated that at current budget rates and reduced manpower levels, the process of phasing in the RMPs cannot be completed before 1996, assuming BLM prepares RMPs at a level rate and abandons its policy of preparing new RMPs only as they are needed to address management issues or replace outmoded MFPs.

PRE-FLPMA PLANNING

10. MFPs provided BLM with a highly detailed planning base for making land use decisions and allocating resources in the context of multiple-use management. The 1975 BLM manual defined an MFP as a planning decision document establishing for a given public land area, land use allocations, coordination guidelines for multiple use, and objectives to be achieved for each class of land use or protection.

11. The MFPs were, in practice, very detailed and complex sets of documents requiring significant amounts of data, analysis, and public participation. The MFP incorporated an interdisciplinary approach to planning and, where appropriate, addressed each of the following resource and support programs: Lands, Minerals, Forestry, Range, Watershed, Wildlife, Recreation, Cadastral Survey, Fire Protection, Roads and Trails, Buildings and Yards, Access/Transportation/Rights-of-Way, and General Administration. In addition, the MFP process was designed to include in the development of land use plans such principles as issue identification, inventory of resources, public participation, social-economic assessment, environmental impact analysis, conflict resolution, and coordination with affected federal, state, and local agencies. Paragraphs 12-18 outline the steps called for in the 1975 BLM manual to ensure the effective use of these principles.

12. A *pre-planning analysis* was prepared for each MFP planning unit to identify issues to be addressed, level of planning detail, inventory needs, scheduling requirements, and dollar and personnel resources needed to complete the plan. The planning team reviewed national level policy guidance and general criteria, as set out in the BLM manual and other relevant documents.

13. Concurrently, the planning team prepared a *public participation plan* to identify interested and affected publics, develop a strategy for obtaining input throughout the planning process, and for communicating decisions once they had been made. Appendix 2 to the 1975 BLM manual, section 1601, Public Participation in the Planning Process, provided extensive guidance on how BLM's planning teams might effectively implement the public participation plans and solicit public input into MFPs and related planning documents. In actual practice, public participation was most often solicited through notices, brochures, mailouts, field tours, open houses, public meetings, formal hearings, and individual contacts with numerous individuals, groups, organizations, public land users, and state and local government agencies. Typically, BLM would begin soliciting input before the formal planning process was begun and would continue throughout the process until after the planning decisions had been made.

14. Early in the planning process, a *social-economic profile* (SEP) was prepared for the state or region of which the planning area was a part. The SEP analyzed major social and economic trends and issues. Also, it described governmental infrastructures that impacted the management of public lands and associated resources. Additionally, the document set forth BLM's relationship with other planning and land use control groups and listed agencies, groups, and individuals who might need to be consulted

during the development and implementation of the land use plan. The SEP was to be used as a tool by the planning team in preparing other portions of the plan.

15. Before BLM prepared its planning recommendations in the MFP, it undertook a comprehensive collection and analysis of resource data for each of the programs listed above in paragraph 11. This crucial process took place in four steps in what BLM called a *Unit Resource Analysis* (URA). Step 1 entailed preparation of a *base map* displaying planning area boundaries and landownership status to facilitate the recording of resource data later in the development of the plan. Step 2 consisted of an in-depth *physical profile* or description of resource elements, including climate, topography, geology and soils, vegetation, water resources, animals, fire, limiting factors, and developments. Step 3 involved the description and analysis of the *present situation* for each major resource category, including evaluations of current use, production, trends, conflicts, and resource quality. Concurrently, an *ecological profile* was prepared that analyzed ecological conditions and interrelationships in the planning area. In Step 4, BLM analyzed all feasible *management opportunities* for each resource category and examined options for improving ecological quality. The last three steps entailed extensive consultation with various publics and user groups and often were preceded by inventories to gather data needed for the analysis. The 1975 BLM manual called for extensive narratives and graphic overlays to document the descriptions and analyses. Typically, a completed URA would consist of several volumes of data and as many as 100-150 large, mylar overlays to be used in conjunction with the base map. The URA provides an extremely valuable source of information, not only for BLM resource specialists involved in the development and imple-

mentation of the MFP, but for state, regional, and local land use planning agencies which rely heavily on the information.

16. Data and analyses provided by the URA and SEP were then used by the BLM planning team to prepare a *Planning Area Analysis* (PAA). Among other things, the PAA analyzed the significance of public lands and resources to users and institutions in the vicinity, developed demand projections for public lands and resources in the planning area, and analyzed the significance of "critical environmental areas" as defined by state or federal law. The PAA was intended to facilitate development of resource objectives and recommendations in the MFP and to help evaluate the significance of various conflicts during the multiple use analysis.

17. Following completion of the URA and PAA, BLM planning teams began preparation of the MFP. The planning team drew upon all of the previous analyses and solicited public participation in the development of planning objectives and recommendations. An MFP was completed in three steps. During Step 1, each resource specialist developed *objectives* to be reached for a particular resource program and made specific *recommendations* as to how each objective was to be achieved. The recommendations were to reflect BLM policy and were to be responsive to social, economic, and environmental needs. At Step 2, the responsible BLM manager conducted the *Multiple Use Analysis* which entailed an analysis of impacts of the Step 1 recommendations and identification of conflicts between various resource programs. In conducting this analysis, the BLM manager was to consider the respective values of the resources involved, the magnitude of the impacts, and the significance of values that would be gained or lost. The BLM manager then reconciled conflicting recommendations and, where appropriate, considered alternatives to

reaching the objectives identified in Step 1. The manager's decisions became the multiple use recommendations.

18. Step 3 of the MFP was completed by the appropriate BLM District Manager who decided whether to accept, reject, or modify the multiple use recommendations made in Step 2. Summaries of the MFP Step 3 decisions were commonly prepared and sent to persons who had participated in the planning process and other interested parties. Decisions on certain resource programs, such as livestock grazing, might be deferred until completion of programmatic environmental impact statements where such were required. Although compliance with sections 102(2)(A) and (B) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(A) and (B), was generally accomplished throughout the planning process, specific compliance with section 102(2)(C) was generally reserved until specific planning recommendations were proposed for implementation.³

19. MFPs were very detailed and assessed virtually all resource programs found within the planning area. Nonetheless, implementation of planning decisions for certain activities required more specific analysis and coordination with public land users and affected publics upon approval of the MFP. Such detailed planning was later prepared by individual resource programs. These planning documents, known as *activity plans*, were generally prepared on a site specific basis involving smaller geographic areas. The plans were prepared with public participation and were preceded by NEPA compliance. The intent to prepare ac-

³ In general, NEPA section 102(2)(A) requires federal agencies to use an interdisciplinary approach in planning and decisionmaking. NEPA section 102(2)(B) requires that consideration be given to unquantified environmental amenities and values in decisionmaking. NEPA section 102(2)(C) requires the preparation of an EIS for major, federal agency actions.

tivity plans was usually cited in the MFP, but plans could be prepared whenever BLM recognized need for them in order to implement an MFP decision. Activity plans were commonly prepared for such resources as wildlife (Habitat Management Plan), wild horses and burros (Herd Management Area Plan), forestry (Timber Management Plan), realty actions (Lands Activity Plan), recreation (Recreation or Wilderness Management Plan), and road maintenance (Transportation Plan).

20. MFPs and related planning documents were, thus, comprehensive in nature and embodied state-of-the-art principles of planning and environmental assessment. Many of the principles, terms, and concepts used or developed in the pre-FLPMA MFP process were incorporated into the planning requirements of FLPMA, section 202, and now provide standards for BLM's current planning process. MFPs prepared in accordance with the relevant BLM manual sections for those plans substantially meet all nine of the planning principles identified in section 202 of FLPMA. Specifically, MFPs: 1) promote the principles of multiple use as set forth in applicable law, (see page 7, Glossary, BLM Manual 1601, release 1-952, 3/6/75; 2) use a systematic interdisciplinary approach in considering physical, biological, economic and other sciences as described in the 1975 BLM Manuals 1601, 1603, 1605, 1607, and 1608; 3) consider the identification and protection of critical environmental areas as generally described in the BLM Manual 1607.5, release 1-959, 3/28/75, and as further provided by specific resource programs in the URA Step 3 and MFP Steps 1, 2, and 3; 4) rely on an inventory of the public lands and their resources as provided in Steps 1 and 2 of the URA; 5) consider present and potential uses of the public lands as provided in Steps 3 and 4 of the URA and Steps 1 and 2 of the MFP;

6) consider relative values of resources involved and alternative means for enhancing those values as provided in URA Step 4 and MFP Step 2; 7) consider long-term and short-term benefits and impacts in MFP Steps 1, 2, and 3; 8) provide for compliance with applicable state and federal pollution laws as described in the PAA and URA Step 3, and through the resource program recommendations of MFP Steps 1, 2, and 3, (see, for example, Watershed, BLM Manual 1608.36, release 1-955, 3/19/75); and 9) provide for extensive coordination with state and local governments and other federal agencies in conducting inventories and developing planning recommendations, taking into account the views of these agencies and giving full consideration to plans and programs developed by them (see Intergovernmental Cooperation in the Planning Process, BLM Manual 1601.8, release 1-952, 3/6/75). Attached as Exhibit 3 is relevant Planning Guidance from the BLM Manual.

POST-FLPMA PLANNING

21. After FLPMA was enacted on October 21, 1976, BLM continued to prepare MFPs using the 1975 BLM manual instructions until they were discontinued substantially on February 2, 1983. After the planning regulations became operative in 1979, the 1975 instructions were used with the regulations in the blending process for transition MFPs, as described in paragraph 24.

22. As stated above in paragraph 8, the planning regulations for section 202 of FLPMA became effective on September 6, 1979. The regulations were issued primarily to respond to the public participation requirements of FLPMA in connection with the planning process. As they evolved, the regulations closely followed the rulemaking for land use plans applicable to National Forest System

lands. This was not intended originally. BLM's initial course of action was documented in its draft regulations package of early 1978. In essence, that course provided for the incorporation of the 1975 BLM manual guidance for MFPs into rulemaking. But with greater emphasis on certain principles set out in FLPMA (e.g., giving priority to AOEC designations, consistency with state and local plans) [sic]. Other modifications reflected suggestions by the American Society of Planning and by BLM officials experienced in MFP preparation. However, the essential elements of the MFP process were intended to be preserved. All of this was changed, however, during the proposed rulemaking stage when BLM decided to adopt the nine step planning process as used by the Forest Service in developing its land use plans. This was done to reduce the complexities of the planning process in the public's mind and, consequently, to encourage public participation in the land use planning of the Nation's two largest multiple use land management agencies — BLM and the U.S. Forest Service. Thus, as it turned out, the proposed rulemaking of December 15, 1978, differed materially from BLM's original draft regulations. The changes involved, among other things, establishing a combined planning and NEPA process (an EIS for each land use plan is prepared as the plan is produced), the packaging of each land use plan and EIS into a single document, provisions for administrative review of planning decisions, and using the plans as a basis for unsuitability reviews as called by section 522 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1272.

23. The new BLM planning regulations also implemented the planning principles set out in section 202 of FLPMA. To ensure full MFP compliance, and to protect an MFP from invalidity claims relative to FLPMA 202 compliance, section 1601.8(b)(1) (1979) was added to the regulations. Also, Instruction Memorandum No. 80-109,

dated November 23, 1979, was issued. It states in part that:

Paragraph 1601.8(b)(1) requires management framework plans to be examined and found satisfactory against a set of prescribed standards before they can be used as a base for decisions. Management framework plans which do not meet the prescribed standards are invalid and may not be used as a basis for management decisions.

Thus, only those MFPs passing the compliance review required by this instruction were to be retained and used during the transition period referenced in the regulations. The 1984 BLM Manual, Section 1618, further amplifies the compliance review requirement for MFPs.

24. The BLM planning regulations provide for not only the use of RMPs but also for the use of MFPs and the completion and use of transition MFPs. As to the latter, the original 1979 regulations provided, at 43 CFR 1601.8(a), that the Director "shall establish those portions of these regulations which are to be used in the completion of those plans, given time and budgetary constraints established through Federal budgets and legally mandated schedules." The BLM Director's determinations relative to this requirement were published in the *Federal Register*. 44 F.R. 69374 (December 3, 1979). The Director identified 88 transition MFPs, all of which were to be completed after September 6, 1979. These MFPs were subdivided into four categories for the purpose of blending their preparation into the new procedures of the planning regulations.

<u>Category</u>	<u>Scheduled Date of Completion</u>
A	FY 80
B	FY 81
C	FY 82
D	FY 83

The planning regulations were phased in differently for each category. Category A transition MFPs, were well advanced by the time the regulations were adopted and, therefore, their development did not follow substantially the new procedures of the regulations. On the other hand, the procedures followed in the preparation of the Category D transition MFPs were more fully governed by new regulations.

25. Interior's policy is to initiate an RMP only when management issues so require. The "transition period" regulations reflect this policy.⁴ Also, the regulations provide for MFP amendments during the transition period. MFP amendments, rather than an RMP, are initiated when (1) there is only a single issue, (2) the existing MFP does not adequately address the issue, and (3) preparation of the amendment – when compared to the preparation of an RMP – will be cost effective.

26. The planning regulations mandate public notice and opportunities for public participation at five specific

⁴ This policy was stated and restated during the rulemaking process. See, for example: 43 F.R. 58767 (December 15, 1978) (MFPs remain valid until revised, over time, with RMPs. Areas with critical problems come first, while other areas will continue under MFPs for longer periods); 46 F.R. 57448 (November 23, 1981) (To be more responsive to program needs and public understanding, the regulations are being revised so as to permit more readily the existing MFPs to continue to be used until such time as they can be replaced with RMPs).

points in the development process for RMPs. 43 C.F.R. § 1610.2(f). These opportunities for public participation are required as well for all RMP and MFP amendments. As to each transition MFP, the public participation requirements were applied to the balance of the planning process that still had to be completed after the regulations took effect. Before the planning regulations took effect on September 6, 1979, public participation procedures in the planning process followed the 1975 BLM manual guidelines.

27. Attached as Exhibit 1 are copies of maps, prepared by each of the BLM State Offices, showing the areas in the contiguous western states and Alaska that are covered by respectively, MFPs and RMPs. These maps show the areas covered by the 25 RMPs and the 88 MFPs that have become operative since the planning regulations took effect in 1979. The California Desert Conservation Area Plan, completed in 1980 pursuant to FLPMA section 601, 43 U.S.C. 1781, is not displayed.

28. RMPs are developed by the BLM district and resource area managers, using an interdisciplinary team. The RMP process involves nine planning actions:

- Identification of Issues
- Development of Planning Criteria
- Inventory Data and Information Collection
- Analysis of the Management Situation
- Formulation of Alternatives
- Estimation of Effects of Alternatives
- Selection of Preferred Alternative
- Selection [sic] the RMP
- Monitoring and Evaluation

On April 6, 1984, BLM issued manual guidance to the preparation of RMPs. BLM also has distributed to the public a [sic] explanatory brochure entitled *A Guide to Re-*

source Management Planning on the Public Lands. This brochure, attached as Exhibit 2, contains a general description of the RMP process, including the nine steps mentioned above, with particular emphasis on the opportunities for public participation.

29. The principal differences between RMPs and MFPs are briefly described below:

(a) *Planning Area*: An RMP would generally cover a larger area than an MFP. In 1975, the public lands were subdivided into about 350 planning units for MFPs. Because RMPs are usually prepared for entire resource areas, it will only require about 150 RMPs to cover completely the remaining public lands in BLM's custody.

(b) *Environmental Impact Statement*: Under the planning regulations, an EIS is prepared as a matter of course for each RMP. By policy and regulation, Interior has determined that the preparation of an RMP is a major federal action significantly affecting the human environment. EISs were prepared during the preparation of MFPs only where required for particular program recommendations or when specific actions were proposed for implementation.

(c) *Plan Consistency*: FLPMA section 202(c)(9) states in part:

Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

The RMP process accommodates this consistency mandate. While MFPs were prepared with inter-governmental coordination, consistency with plans of state and local governments was not strictly required. This requirement was factored into the transition

MFPs after Fiscal Year 1980 as well as into all MFP amendments.

(d) *Areas of Critical Environmental Concern:* Under the RMP procedures, priority is given to the designation and protection of areas of critical environmental concern (ACEC's). Under MFP procedures, ACEC designation was not required nor was special priority assigned. However, certain areas requiring special management were identified as "critical environmental areas."

(e) *Plan document:* The RMP is published and distributed to the public as a single planning document. By comparison, the MFP is a [sic] extensive collection of work sheets, narratives, and maps with overlays which, because of its size and composition, is not subject to widespread distribution. A summary of MFP decisions often was printed as a separate document and distributed.

(f) *Protests:* RMP procedures allow participants to protest provisions of a proposed RMP at the end of the planning process. Protest triggers an administrative review. No protest or administrative review was afforded under the MFP procedures.

As indicated previously, however, MFPs passing BLM compliance determinations are valid land use plans insofar as compliance with the planning principles of FLPMA section 202.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 5th day of September, 1986.

/s/ DAVID C. WILLIAMS

David C. Williams

Supreme Court of the United States

No. 89-640

MANUEL LUJAN, JR.,
SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

NATIONAL WILDLIFE FEDERATION, ET AL.

ORDER ALLOWING CERTIORARI.
Filed January 16, 1990.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

January 16, 1990

Justice O'Connor took no part in the consideration or decision of this petition.